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STATE OF WASHINGTON

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

SEATTLE TIMES COMPANY, )  
a Delaware corporation, )  
Petitioner, )

v. )

THE HONORABLE SUSAN K. )  
SERKO, Judge of the Superior )  
Court, Pierce County; and THE )  
HONORABLE BRYAN E. )  
CHUSCHOFF, Judge of the Superior )  
Court, Pierce County, )

Respondents. )

No. 84691-0

PETITION FOR WRIT OF  
MANDAMUS

**ORIGINAL**

Petitioner Seattle Times Company ("Times") alleges as follows:

### **I. PRELIMINARY STATEMENT**

1. The Times seeks a writ of mandamus to compel Respondents to allow public access to police incident reports and other public records related to the November 29, 2009, shooting of four Lakewood police officers. The records are of extreme public interest and are subject to disclosure under the Public Records Act ("PRA"). The public is being categorically denied access to the records by two orders entered by the Respondents, both Superior Court judges in Pierce County, in the criminal cases of seven alleged accomplices to the shootings. The Times seeks this writ on the ground that the orders enjoining disclosure are plainly contrary to the PRA and to numerous decisions of this Court addressing public access to investigative records, the sealing of court files, and the proper method for assessing claims of prejudicial pretrial publicity.

2. Respondent Judge Serko entered an order on May 20, 2010 (the "May 20 Order," Ex. A), finding that the defendants' fair trial rights required withholding virtually all of the records requested by the Times. From the facially incorrect premise that the public has "no constitutional right to attend criminal trials," *id.* at 8, Judge Serko withheld the records without identifying any applicable PRA exemption; without specifying how disclosure of *any* – much less *all* – of the records would endanger

defendants' fair trial rights; and without considering whether alternatives short of blanket secrecy could have addressed any fair trial concern. The court identified no fact to indicate that the disclosure would lead to prejudicial pretrial publicity. To the contrary, the court held that the news coverage to date had *not* endangered the court's ability to seat an impartial jury. The May 20 Order conflicts with, among other authority, *Cowles Publishing Co. v. Spokane Police Department*, 139 Wn.2d 472, 987 P.2d 620 (1999). *Cowles* holds that (a) police investigative records are presumptively subject to disclosure under the PRA when they relate to incidents in which a suspect has already been referred for prosecution, and (b) a defendant's fair trial right does not compel categorical nondisclosure of investigative records about the underlying case.

3. Respondent Judge Chuschoff entered an *ex parte* order dated June 9, 2010 (the "June 9 Order," Ex. B), sealing all exhibits entered in open court in a just-completed criminal trial of one of the alleged accomplices to the shootings. The order contains none of the findings required by GR 15 and is plainly unconstitutional under *Rufer v. Abbott Laboratories*, 154 Wn.2d 530, 114 P.3d 1182 (2005).

4. An original action for mandamus is the appropriate vehicle for news entities to vindicate their rights of access in the context of criminal

proceedings. The Times has no alternative speedy and adequate remedy that would permit timely release of the public records at issue.

## II. PARTIES AND JURISDICTION

5. Petitioner, a Delaware corporation, publishes three Washington daily newspapers – *The Seattle Times*, the *Yakima Herald-Republic* and the *Walla-Walla Union-Bulletin* – and their affiliated websites.

6. The Times is beneficially interested in this matter, RCW 7.16.170, because it submitted the PRA requests described herein.

7. Respondents are judges of the Superior Court for Pierce County.<sup>1</sup>

8. Respondents are under a clear duty resulting from their office, RCW 7.16.160, to follow the PRA, the holdings of this state’s appellate courts, and other statutory and constitutional authority.

9. This Court has original jurisdiction over this petition under Article 4, Section 4 of the State Constitution, RCW 7.16.160 and RAP 16.2. *See State ex rel. Edelstein v. Foley*, 6 Wn.2d 444, 448, 107 P.2d 901 (1940) (superior court judge is “state officer” and thus subject to Art. 4, Sec. 4).

10. It is appropriate for this Court to exercise original jurisdiction over this matter. This case concerns the right of the press and the public to obtain timely access to police and court records of extreme public interest.

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<sup>1</sup> Although the only necessary respondent in a mandamus action is the official to whom the proposed writ is directed, *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 35, 640 P.2d 716 (1982), the Times has provided notice of this action to all parties who appeared in proceedings regarding the two orders at issue.

This Court has approved mandamus as the means by which the press may assert its rights, particularly in the context of criminal cases for which formal intervention is not permitted. *See Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 35, 640 P.2d 716 (1982); *State v. Coe*, 101 Wn.2d 364, 372, n.2, 679 P.2d 353 (1984); *State v. Bianchi*, 92 Wn.2d 91, 93, 593 P.2d 1330 (1979). Even if the Times has a right of direct review (which is uncertain, *id.*), mandamus is still appropriate where – as here – the press seeks to obtain newsworthy records in a timely manner, or where alternative means such as discretionary review would involve additional delay. *Coe*, 101 Wn.2d at 372 n.2. Absent intervention from this Court, Respondents' orders likely will be used as a basis to close proceedings and seal court records in the upcoming trials of the other alleged accomplices to the shootings, and will be cited by defendants generally to deny the press and public timely access to police reports any time a trial is pending.

11. If the Court finds mandamus to be an inappropriate vehicle, the Times requests in the alternative that the Court treat this Petition as a motion for direct review of the May 20 and June 9 orders under RAP 4.2.

### **III. FACTS AND PROCEDURAL BACKGROUND**

#### **A. The Times' PRA Request**

12. On November 29, 2009, Maurice Clemmons shot and killed four Lakewood police officers at the Forza coffee shop in Parkland.

13. Shortly thereafter, reporter Steve Miletich, on behalf of the Times, made a verbal public records request to the Pierce County Sheriff's Office ("PCSO") for incident reports relating to the events inside the coffee shop. On December 17, Miletich made a written PRA request to PCSO for police incident reports related to events outside the coffee shop after the shootings. On January 4, 2010, he requested records held by PCSO related to ATF "gun trace" information in connection with the shootings. Ex. C (summary of PRA requests).

14. The PCSO is prepared to release the investigative record requested by the Times and by other PRA requesters, unless enjoined from doing so. Ex. D (2/10/10 letter from PCSO). At no time has the PCSO claimed that any of the records are exempt from disclosure. Neither the PCSO nor the Pierce County Prosecutor's Office has claimed that nondisclosure of the records is "essential for effective law enforcement." RCW 42.56.240(1) (PRA's investigative records exemption).

#### **B. Motions to Enjoin the PRA Requests**

15. The State has filed criminal charges against seven alleged accomplices of Maurice Clemmons. These defendants, and the case numbers of their individual criminal cases, are listed on the face of the May 20 Order, Ex. A. The cases remain open.

16. On March 11 and 12, 2010, five of the defendants moved to enjoin the PCSO from producing “any and all” records responsive to the Times’ PRA request. Ex. E (defense motions). The remaining defendants subsequently joined in the motions.

17. Although filed in the individual criminal actions, the motions were brought under RCW 42.56.540, a section of the PRA that allows a party named in or referred to in a public record to seek to enjoin its release. The Times opposed the motions. Ex. F.

18. On May 7, 2010, Judge Stephanie Arend entered an order in the seven separate criminal matters, directing that the records at issue be submitted for a consolidated *in camera* review by “[a] sitting Judicial Officer of Pierce County,” to determine whether any PRA exemption applied and whether release of any of the records would impair the defendant’s right to a fair trial. Ex. G.

19. Defendants submitted further objections to disclosure on May 14, 2010. Defendants argued that, with the exception of four records (all related to an individual who had previously been tried for falsely claiming responsibility for the shootings), the records were categorically exempt under the PRA and the Sixth Amendment. Ex. H. The Times responded to these objections on May 18, 2010. Ex. I.

**C. Judge Serko's May 20, 2010 Order**

20. The *in camera* review was referred to Judge Serko. In the May 20 Order, she concluded that all of the records, other than the four items to which defendants did not object, were exempt from disclosure. Ex. A.

21. The May 20 Order invited the parties to submit written objections. *Id.* at 21. The Times did so on May 28, pointing out four distinct errors of law in the order, each understating the public's right of access. Ex. J. Defendants responded to these objections. Ex. K.

22. Judge Serko heard argument on the objections on June 7, 2010. Judge Serko construed the Times' objections to the May 20 Order as a motion for reconsideration, and she denied that motion. Ex. L.<sup>2</sup>

**D. Judge Chuschoff's June 9, 2010 Sealing Order**

23. The trial of one of the seven alleged Clemmons accomplices, Latanya Clemmons, began on May 17, 2010. The evidentiary portion of the trial was complete prior to June 9, 2010.

24. Television cameras were permitted during the evidentiary portion of the Latanya Clemmons trial. *See, e.g.,* <http://tinyurl.com/2e2ozg8> (5/24/10 KING-5 news coverage of trial testimony). Trial exhibits – including at least some that were withheld pursuant to the May 20 Order – were entered into evidence in open court, and were reported on in the

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<sup>2</sup> At the hearing, Judge Serko made some verbal clarifications to the narrative of the May 20 Order, but did not alter the order itself. A transcript of the hearing is forthcoming.



press. See, e.g., <http://tinyurl.com/2c2qecg> (5/20/10 *Seattle Times* story reporting on taped interview with Latanya Clemmons played at her trial); <http://tinyurl.com/2eccv2b> (May 25, 2010 *News Tribune* story discussing trial testimony regarding investigation).<sup>3</sup>

25. On June 9, 2010, counsel for defendant Eddie Davis moved *ex parte* to seal all of the Latanya Clemmons trial exhibits. The only ground offered in support of the motion was Judge Serko's May 20 Order. Ex. M (motion to seal).

26. Judge Chuschoff entered the *ex parte* order on June 9, 2010. It states that "all exhibits admitted in the case of State v. Clemmons ... shall be sealed pending examination of these exhibits by defense counsel[.]" A hearing on the matter is currently scheduled for June 25, 2010.

27. The June 9 Order was entered without notice to all interested parties, as required by GR 15 and *Rufer v. Abbott Laboratories*. Neither the June 9 Order, nor the May 20 Order on which it is based, contains any finding that sealing was justified by identified compelling concerns that outweighed the public interest in access to court records. Neither the June 9 Order, nor the May 20 Order on which it is based, considered less restrictive alternatives to sealing. Such findings are required by GR 15, *Rufer*, and Article 1, Section 10 of the State Constitution.

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<sup>3</sup> This Court may take judicial notice of the fact of news publication. RCW 5.68.010(4).

#### IV. STATEMENT OF CLAIMS

##### A. The May 20 Order Misconstrues the PRA and Disregards This Court's Pretrial Publicity Cases

28. The issues raised in this Petition are not new. In *Cowles*, this Court set out the analysis that applies where, as here, a PRA requester seeks police investigative reports while the underlying criminal trial remains pending. The May 20 Order mentions *Cowles*, but fails to apply it, and ignores its holding and rationale.

29. *Cowles*, which involved a newspaper PRA request for a police incident report, holds that such investigative records are “presumptively disclosable upon request” after the suspect has been arrested and referred to the prosecutor for charging. 139 Wn.2d at 481; *see also id.* at 479-80 (“[W]e hold in cases where the suspect has been arrested and the matter referred to the prosecutor, any potential danger to effective law enforcement is not such as to warrant categorical nondisclosure of all records in the police investigative file.”). The presumption of disclosure can be overcome, but only if the court determines that nondisclosure of specific information is “essential” to “effective law enforcement,” as required under the PRA’s investigative records exemption.<sup>4</sup> *Id.*

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<sup>4</sup> The investigative records exemption was RCW 42.17.310(1)(d) at the time *Cowles* was decided. The same provision is currently codified at RCW 42.56.240(1).

30. *Cowles* also holds that a defendant's right to a fair trial does not require maintaining blanket secrecy of all related police records:

Nor does a defendant's constitutional right to a fair trial compel categorical nondisclosure of police investigative records. ***Facts regarding pending criminal prosecutions are often made public prior to trial. This rarely results in the inability to impanel a fair and impartial jury....*** The general public is well aware that a person is innocent until proven guilty.

*Id.* at 479 (emphasis added). Rather than "categorical nondisclosure," *Cowles* presumes access, and requires that to the extent nondisclosure of information is nevertheless necessary to protect the trial process, "the trial court should conduct an *in camera* review and make a case-by-case determination of whether nondisclosure is essential to effective law enforcement." *Id.* at 479-80.

31. *Cowles* is squarely on point in this case, but the May 20 Order disregards the decision. Most fundamentally, Judge Serko failed to acknowledge that the police investigative records sought by the Times are presumptively subject to disclosure, under both *Cowles* and the PRA's mandate that public records must be provided unless a specific exemption applies. RCW 42.56.030, .070(1); *Progressive Animal Welfare Society v. University of Washington*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994) ("*PAWS*"). While Judge Serko reviewed the records *in camera*, she

withheld virtually all of them without any case-by-case determination that release would impair effective law enforcement, and without any factual explanation as to why blanket nondisclosure was necessary to protect defendants' fair trial rights. This is precisely the categorical nondisclosure that *Cowles* holds is impermissible.

32. The May 20 Order misconstrues the PRA in other critical respects:

a. The May 20 Order's discussion of the investigative records exemption ignores *Cowles*, and relies instead on *Newman v. King County*, 133 Wn.2d 565, 947, P.2d 712 (1997). Ex. A at 5. The order suggests that under *Newman*, the records might be exempt from disclosure because prosecutors have not yet decided whether to seek the death penalty against one of the defendants, and thus the investigation could be considered "ongoing" (even though neither the prosecutor nor the PCSO so assert). *Id.* This analysis is incorrect, first, because *Newman* is inapplicable to cases (like this one) in which the defendant has already been identified. The question in *Newman* was whether withholding records of a 25-year-old homicide investigation in which no suspect had been identified was "essential to effective law enforcement." This Court held that it was. The holding was based on deference to investigators' claims that they were still pursuing leads and that the case was "leading toward an enforcement proceeding." *Id.* at 573. But *Newman* was limited to its facts in *Cowles*,

which articulates a different standard for evaluating the investigative records exemption *after* “the suspect is arrested and the case referred to the prosecutor.” *Cowles*, 139 Wn.2d at 481. Under *Cowles* and the plain language of RCW 42.56.240, the issue is not whether some aspect of the investigation is “ongoing.” The issue is whether nondisclosure is “essential to effective law enforcement.” The May 20 Order identifies no evidence that releasing the records at issue would affect the prosecutor’s ability to make the death penalty decision, or impair any other law enforcement function. The May 20 Order mistakenly relies on *Newman*, and disregards *Cowles*’ holding that disclosure under the PRA need not wait until the judicial process has run its course. 139 Wn.2d at 479.

b. The May 20 Order declines to fully address the scope of the investigative records exemption, because it purports to rely instead “on the exemption in RCW 42.56.540.” Ex. A at 5. The order goes on to withhold all of the records at issue based on this Section 540 “exemption.” *Id.* at 7-21. But Section 540 is not an exemption to disclosure. Rather, as this Court has held several times, it is a procedural provision, not an independent basis for withholding public records. The provision (formerly RCW 42.17.330) “is simply an injunction statute. It is a procedural provision which allows a superior court to enjoin the release of specific public records *if they fall within specific exemptions found elsewhere in*

*the Act.*” PAWS, 125 Wn.2d at 257 (emphasis added); *see also Soter v. Cowles Publishing Co.*, 162 Wn.2d 716, 756-57, 174 P.3d 60 (2007). The May 20 Order disregards this rule, and erroneously withholds records under RCW 42.56.540, untethered to any specific PRA exemption.

33. The May 20 Order ultimately rests on the Court’s apparent determination that defendants’ fair trial rights trump any right of access that the Times or the public has under the PRA. Ex. A at 6-7. Relying on *Gannett Co. v. DePasquale*, 443 U.S. 368, 391 (1979), Judge Serko found that “[m]embers of the public have no constitutional right to attend criminal trials.” Ex. A at 6. Further, the May 20 Order finds that defendants’ fair trial rights justified a blanket nondisclosure of all of the police records related to the Maurice Clemmons investigation. The sole factual finding cited in support of this conclusion is the following:

The Court takes judicial notice of the extraordinary level of local, state and national attention that this story garnered for days and weeks following the November 29, 2009 event. ***By recognizing the extensive coverage of these cases by the media, the Court does not suggest that a fair and impartial jury and proceeding cannot occur in Pierce County***; however, further release of investigative materials and details *may* jeopardize that right which in turn justifies exemption under the PRA.

*Id.* at 7 (emphasis added). Judge Serko’s analysis of defendants’ fair trial rights is plainly erroneous, in at least the following respects:

a. The May 20 Order fails to acknowledge *Cowles*' discussion of fair trial rights. Under *Cowles*, "protection of the trial process" is a legitimate law enforcement end, such that records may be withheld under the PRA's investigative records exemption when doing so is essential to protect fair trial rights. 139 Wn.2d at 478. But, again, categorical nondisclosure on this basis is not permitted. Because disclosure of police records "rarely results in the inability to impanel a fair and impartial jury," *id.* at 479, withholding records on this basis can only be done after a careful, fact-specific analysis. No such analysis was done in this case.

b. The May 20 Order makes no finding that release of the records at issue will result in prejudicial pretrial publicity, but instead relies entirely on speculation. This Court requires factual findings of prejudice, not mere speculation, to support any claim of prejudicial pretrial publicity. For example, in *Ishikawa*, this Court reversed the trial court's closure order in part because Judge Ishikawa presumed, without factual findings, that news coverage about the underlying trial was prejudicial:

Other than acknowledging that petitioner-newspapers had covered the murder itself (some 6 months earlier) the court included no other factual findings or legal conclusions in the record. ... The court's legal conclusions were not substantiated by the factual findings. The factual basis for its conclusions regarding the need for secrecy and the suitability of the methods chosen should have been detailed. For example, there is no evidence that the

judge considered the actual impact of publicity on potential jurors[.]

*Ishikawa*, 97 Wn.2d at 41. The May 20 Order makes the same error.

In other contexts, this Court has similarly held that a generalized fear of publicity is insufficient to implicate the defendants' fair trial rights. The relevant question is whether the court will be unable to seat an impartial jury – a determination that is to be made with reference to such factual considerations as whether or not the publicity was inflammatory; when such publicity occurred relative to trial; and the size of the jury pool. *State v. Jackson*, 150 Wn.2d 251, 270, 76 P.3d 217 (2003). “Pretrial publicity need not impair the defendant’s right to a fair trial,” even where a defendant stands accused of violent well-publicized crimes in a small community. *State v. Bassett*, 128 Wn.2d 612, 616-17, 911 P.2d 385 (1996); *State v. Rice*, 120 Wn.2d 549, 557, 844 P.2d 416 (1993) (“fact that a majority of prospective jurors had knowledge of the case, without more, is irrelevant.... The relevant analysis is whether the jurors had such fixed opinions that they could not act impartially”).<sup>5</sup>

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<sup>5</sup> See also *State v. Clark*, 143 Wn.2d 731, 757, 24 P.3d 1006 (2001) (no prejudice where news coverage of crime was widespread but “media coverage itself didn’t create the inflammatory publicity as much as the facts of the crime, and the coverage itself did not appear to be designed or directed to inflame”); 12 Royce A. Ferguson, Jr., WASHINGTON PRACTICE: CRIMINAL PRACTICE AND PROCEDURE, § 1814 (3d ed. 2004) (“The mere presence of widespread adverse pretrial publicity concerning the defendant does not establish a reasonable probability that he cannot obtain a fair trial”).



The May 20 Order ignores this authority. It rests on bare speculation about future news coverage, with no discussion about the size of the jury pool, or the anticipated difficulty in seating an impartial jury. While news coverage of the November 29 events may have been extensive, Judge Serko determined that it has not been prejudicial to these defendants. The order thus provides no basis for finding that disclosure would in fact threaten the defendants' fair trial rights.

c. Even if any defendant had established a substantial probability that pretrial publicity posed a risk of prejudice, categorical nondisclosure still would not be appropriate. Rather, the trial court would first be required to consider alternatives to closure, such as searching voir dire and cautionary jury instructions. *Bassett*, 128 Wn.2d at 616. Moreover, whether a defendant's fair trial rights justify any restriction on the public's right of access is determined under the five-factor test set forth in *Ishikawa*. That test is "a strict, well-defined standard" intended to assure "careful, case-by-case analysis" when restrictions on public access are sought. *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995). In this context, the most significant *Ishikawa* factor would be the requirement that "the requested method for curtailing access" is "the least restrictive means available[.]" 97 Wn.2d at 38. The logic of *Ishikawa* precludes

blanket nondisclosure, and requires a careful, specific analysis that is absent in the May 20 Order.

d. The May 20 Order also must be rescinded because of its erroneous conclusion that the public has “no constitutional right” of access to criminal trials, based on *Gannett*, 443 U.S. 368. Ex. A at 8. But *Gannett* addresses only the Sixth Amendment. As the U.S. Supreme Court explained a year after it decided *Gannett*, the public does have a right of access to criminal proceedings under the *First* Amendment. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564 (1980). “The first amendment guarantees the public and the press the right to attend criminal trials.” *Seattle Times Co. v. United States Dist. Court*, 845 F.2d 1513, 1515 (9th Cir. 1988).<sup>6</sup> In Washington, this right of access to criminal proceedings and court records is guaranteed by Article I, Section 10 of the State Constitution. *Ishikawa*, 97 Wn.2d at 36. The May 20 Order ignores the unbroken line of cases, dating back to *Ishikawa*, in which this Court has affirmed and expanded the public’s constitutional right of access.<sup>7</sup> The May 20 Order rests on an unconstitutional premise that colors all of its conclusions.

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<sup>6</sup> *Accord*, *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 9 (1986).

<sup>7</sup> *E.g.*, *Allied Daily Newspapers of Wash. v. Eikenberry*, 121 Wn.2d 205, 848 P.2d 1258 (1993); *Bone-Club*, 128 Wn.2d 254; *Rufer*, 154 Wn.2d 530; *State v. Easterling*, 157

34. In sum, the May 20 Order must be rescinded under each of the standards discussed above – *Cowles*’ interpretation of the PRA, *Jackson* and the other cases evaluating claims of prejudicial pretrial publicity, and *Ishikawa* and its progeny. Each of these standards prohibits blanket secrecy based on unsubstantiated concerns about news coverage. All three require starting from a presumption of disclosure, and releasing all of the records except for those portions, if any, for which a factual showing is made (after consideration of alternatives) that nondisclosure is essential for effective law enforcement or to protect a defendants’ fair trial rights.

**B. The June 9 Order Plainly Infringes on the Public’s Rights of Access to Court Record**

35. The *ex parte* June 9 Order sealing the Latanya Clemmons trial exhibits is invalid on its face. Under GR 15 and *Rufer*, exhibits used at trial must be available for public inspection, and cannot be sealed unless the court engages in the five-part *Ishikawa* analysis. The analysis is constitutionally required before any limitation on access to court records is imposed. *Rufer*, 154 Wn.2d at 544.

36. Judge Chuschoff entered the June 9 Order without engaging in such an analysis. Without limitation, (a) notice was inadequate; (b) there was no finding that sealing was the least restrictive means available;

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Wn.2d 167, 171-72, 137 P.3d 825 (2006); *State v. Strobe*, 167 Wn.2d 222, 217 P.3d 310 (2009).

(c) there was no finding that sealing would be effective in protecting the interests allegedly threatened (which, at a minimum, should have considered the fact that the exhibits were already displayed in open court and in the news media); (d) the order did not weigh the competing interests of the defendants and the public, and (e) the order did not consider the alternatives to sealing.

37. Judge Chuschoff's reliance on the May 20 Order as a basis for sealing trial exhibits was not justified. The May 20 Order did not engage in an *Ishikawa* analysis, as discussed above. Nor did it consider that some of the records were relied on by a jury in a public criminal trial. Thus, even if the May 20 Order was entirely correct, the June 9 Order would still be unconstitutional.

## **V. RELIEF REQUESTED**

38. The May 20 and June 9 Orders pose an ongoing injury to the Times' and the public's ability to obtain public records about a matter of extreme public interest. Under the terms of the May 20 Order, the police records sought by the Times will remain secret until the last defendant's trials is "concluded." Ex. A at 22. One of the defendants is not going to be tried until March 2011 at the earliest. Unless this Court directs otherwise, the defendants in the underlying cases likely will continue their efforts to seal court records and proceedings. More generally, the May 20

Order will be relied on by defendants throughout the state to deny the press and public timely access to police records based on a categorical “pending trial” exemption to access – an exemption that is not found in the PRA and that is impermissible under *Cowles*.

39. For the foregoing reasons, the Times respectfully asks this Court:

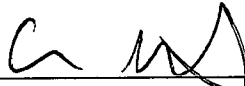
a. To issue a writ of mandamus compelling Respondents to allow public access to (i) the records sought in the Times’ PRA requests, and (ii) to the Latanya Clemmons trial exhibits;

b. Alternatively, to issue a writ compelling Respondents to allow public access to the foregoing records, except for information, if any, that is found (i) to be exempt from disclosure under a specific PRA exemption or (ii) to pose a substantial probability of leading to prejudicial pretrial publicity and an inability to seat an impartial jury. Any such nondisclosure must be supported by factual findings, must consider alternatives to nondisclosure, and must conform with this Court’s decisions in *Cowles*, *Jackson*, *Ishikawa*, and *Rufer*.

c. To issue such other instructions and relief as the Court deems appropriate for resolving the issues presented herein.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of June, 2010.

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## DECLARATION OF SERVICE

I hereby declare that on June 17, 2010, I caused the foregoing document to be filed with the Washington State Supreme Court and arranged for courtesy copies to be served upon the following interested parties via email and U.S. Mail:

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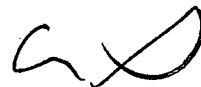
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

EXECUTED this 17th day of June 2010, at Seattle, Washington.



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Eric M. Stahl, WSBA #27619



## DECLARATION REGARDING AUTHENTICITY OF EXHIBITS

I am one of the attorneys for Petitioner, Seattle Times Company, and I declare that the attached documents are true and correct copies of the originals. The attachments are:

- Exhibit A. Finding and Order Re: In Camera Review of PCSO Documents, Entered by Respondent Judge Sarko on 05/20/10
- Exhibit B. Order Sealing Exhibits Admitted in *State v. Clemmons*, Pierce County Cause No. 09-1-05523-0, Entered by Respondent Judge Chushcoff on 06/09/10
- Exhibit C. Summary of Public Records Requests filed by PCSO on 03/18/10
- Exhibit D. Letter from Pierce County Sheriff's Department to Counsel Re: Public Records Request, dated 02/25/10
- Exhibit E. Defendants' Motions to Enjoin Release of Records, dated 03/11/10-03/12/10
- Exhibit F. Opposition of Public Records Act Requester Seattle Times Company to Defendants' Motions to Enjoin Release of Public Records, dated 03/29/10
- Exhibit G. Order on Motion to Reconsider and for in Camera Review for Documents Under Public Records Act, dated 05/07/10
- Exhibit H. Defendants' Memorandum Re: Objection to PCSO Documents Identified for Release, dated 05/13/10
- Exhibit I. The Seattle Times' Opposition to Memorandum Re: Objection to PCSO Documents Identified for Release, dated 05/18/10
- Exhibit J. The Seattle Times' Objections to Court's May 20, 2010 Findings and Order Re: *In Camera* Review of PCSO Documents, dated 05/28/10

Exhibit K. Defendants' Reply to Request Reconsideration, dated 06/04/10

Exhibit L. Order Denying Reconsideration, dated 06/07/10

Exhibit M. Defendant E. Davis' Motion to Seal Exhibits Admitted Into Evidence, in the *State v. LaTanya Clemmons*, Pierce County Cause No. 09-1-05523-0 and Declaration of John O'Melveny in Support Thereof, dated 06/09/10

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Executed this 17th day of June, 2010 at Seattle, Washington.



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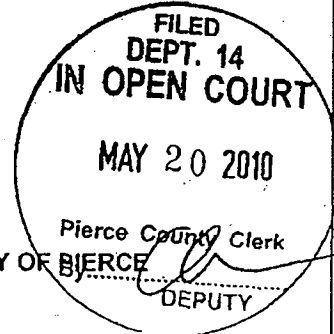
Eric M. Stahl, WSBA #27619

# **EXHIBIT A**

**(Seattle Times Co. v. Sarko)**



10-1-00938-0 34346108 FN 05-21-10



## IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

DAVIS, EDDIE LEE,  
 DAVIS, DOUGLAS EDWARD  
 HINTON, RICKEY  
 WILLIAMS, QUIANA M.  
 NELSON, LATRECIA  
 CLEMMONS, LATANYA K.  
 ALLEN, DARCUS,

Defendants.

No: 09-1-05374-1  
 No: 09-1-05375-0  
 No: 09-1-05340-6  
 No: 09-1-05452-7  
 No: 09-1-05453-5  
 No: 09-1-05523-0  
 No: 10-1-00938-0

FINDINGS AND ORDER RE: *IN CAMERA*  
 REVIEW OF PCSO DOCUMENTS

THIS MATTER having come on before the undersigned Judge for an *in camera* review of documents assembled by the Pierce County Sheriff's Office (PCSO); and the Court having made such review and considered the briefing of the parties and applicable statutes and case law; now, therefore, the Court makes the following findings and order:

PROCEDURAL HISTORY

Public records were requested from the PCSO by Robert J. Hill, American Economy Insurance Company, Christie Law Group, Michael Hanbey (attorney) and the Seattle Times. DPA/Legal Advisor Craig Adams memorialized the documents requested ("Summary of Public Records Requests 3/18/2010") and the responsive documents held ("Summary of Documents Held by Pierce County Sheriff's Department Subject to Disclosure 4/23/2010"). By order dated 4/7/2010, Judge Bryan Chushcoff ordered a stay of disclosure of records until 4/21/2010. On 4/23/2010, Judge Stephanie Arend extended Judge Chushcoff's order to 4/29/2010 for presentation of an order reflecting her oral ruling. On

1 4/29/2010, an order continuing the stay re: *in camera* review for documents under PRA was signed and  
 2 entered by the Court, appointing the undersigned to review the documents held by the PCSO *in camera*.  
 3 The 4/29 order also extended the stay, set a briefing and objection schedule and required the review to  
 4 be completed by May 20, 2010. On May 7, 2010, Judge Arend entered an order on motion for  
 5 reconsideration and for *in camera* review for documents under PRA.

6 Following the above, the undersigned was supplied with copies of all orders, briefs filed to date,  
 7 objections and other related miscellaneous pleadings, along with an original CD with index and  
 8 documents referenced in Mr. Adams' 4/23/2010 summary. Subsequent to 5/7/2010, the Court received  
 9 additional pleadings which included:

- 10       ▪ Memorandum re: Objection to PCSO Documents Identified for Release (filed by  
 Defendant Darcus Allen, 5/14/2010)
- 11       ▪ Objections to Disclosure (filed by Letrecia Nelson, 5/14/2010)
- 12       ▪ Notice of Joinder in Objections to PCSO Documents Identified for Release (filed by  
 Defendant Douglas Davis, 5/17/2010)
- 13       ▪ Seattle Times' Opposition to Memorandum re: Objection to PCSO Documents Identified  
 for Release (filed by Seattle Times, 5/18/2010)
- 14       ▪ Seattle Times' Objection to Douglas Davis' Notice of Joinder in Objections to PCSO  
 Documents Identified for Release (filed 5/18/2010)
- 15       ▪ Seattle Times' Response to Letrecia Nelson's Objections to Disclosure (filed 5/18/2010)

16 The Court is advised that the records requested by Robert J. Hill were previously determined  
 17 exempt by the PCSO. Apparently, Mr. Hill made no further attempt to object to the non-disclosure. The  
 18 records requested by Mr. Hill were not included in the indexed records and he has not appeared at any  
 19 of the hearings on this matter.

#### 20 GENERAL TENETS OF THE PRA

21 Strong public policy is expressed by the Legislature for full and open disclosure regarding  
 22 government process. *RCW 42.56.030*. The burden falls on the objecting party to establish that an  
 23 exemption applies. *Progressive Animal Welfare Soc. v. UW*, 125 Wn.2d 243, 251, 257-258, 884 P.2d  
 24 592 (1994). The collecting agency (PCSO) summarized the records held as responsive to the requests  
 25 but, significantly, voiced no objection to disclosure. The Defendants in the above cases did object.

1 The PRA (Public Records Act) guarantees the public full access to  
 2 information concerning the workings of the government. [cite omitted]  
 3 The PRA preserves "the most central tenets of representative  
 4 government, namely, the sovereignty of the people and the  
 5 accountability to the people of public officials and institutions." [cite  
 6 omitted]

7 The PRA requires disclosure of all public records unless an exemption  
 8 applies. [cite omitted]. When a party seeks a public record, the  
 9 government agency carries the burden of proving that the record is  
 10 exempt from disclosure. [cite omitted]. Additionally, if redaction would  
 11 eliminate the need for an exemption, the PRA requires disclosure of the  
 12 redacted record. RCW 42.56.210(1).

13 *Koenig v. Thurston County*, \_\_\_\_ Wn. App. \_\_\_\_, \_\_\_\_ P.3d \_\_\_\_, 2010 WL 1309617, p. 7 of 24  
 14 (Wash. App. Div. 2, April 6, 2010).

15 With the foregoing public policy considerations and appellate direction in mind, the Court  
 16 reviewed documents, additional case law and concluded factually that the risk to Defendants' fair trial  
 17 rights of pretrial publicity, weighs in favor of non-disclosure for most of the documentation.

#### 18 IN CAMERA REVIEW

19 The process of *in camera* review protects the investigative process, the privacy of an individual  
 20 and the Defendant's right to a fair trial. Multiple courts confirm the need for such a review by the trial  
 21 Court. *Cowles v. Spokane*, 139 Wn.2d 472, 479, 987 P.2d 620 (1999); *Limstrom v. Ladenburg*, 136  
 22 Wn.2d 595, 612, 963 P.2d 869 (1998). All parties agreed that such a review was necessary in this case  
 23 and this review followed.

#### 24 STANDING

25 Defendants have standing to object to the release of the materials identified by the PCSO.  
 Having reviewed the documents, this Court finds that while many of the records do not specifically name  
 one or more of the Defendants, the records "pertain" to them as an overall extensive investigation  
 culminating in the charges filed against these seven Defendants.

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1                    **VIOLATION OF RPC'S AND/OR BENCH-BAR-PRESS GUIDELINES**

2                    The Court finds that although the Rules of Professional Conduct (RPC's) and the Bench-Bar-  
3 Press Guidelines suggest ethical obligations and considerations, they do not rise to the level of  
4 mandatory directives in this context.

5                    **RIGHT TO PRIVACY**

6                    The findings and decision of the Court are based on the paramount concern for the Defendants'  
7 fair trial rights (see discussion below). Although considered, the privacy rights of non-charged individuals  
8 was not the Court's primary focus.

9                    **WORK PRODUCT**

10                   The work product privilege does not apply in this case because the documents are now in the  
11 possession of the opposing party by virtue of the CD given to the undersigned and Defendants' counsel.  
12 Insofar as the mental impressions of investigators, police officers and/or prosecutors are revealed in the  
13 materials, the gathering agencies would have had standing to make this objection to production of the  
14 information to the opposing party and chose not to do so. Therefore, the privilege is waived.

15                   **EFFECTIVE LAW ENFORCEMENT EXEMPTION**  
16 **(ONGOING INVESTIGATION)**

17                   If a record is an investigative record compiled by law enforcement, its  
18 nondisclosure must be "essential" to law enforcement or to protect a  
19 person's right to privacy for that record to be exempt from disclosure  
20 under RCW 42.56.240(1). Whether nondisclosure is essential to  
21 effective law enforcement is an issue of fact. [cite omitted] The broad  
22 language of this exemption, which the legislature has not defined,  
23 clashes with the PRA's presumption and preference for disclosure. [cite  
24 omitted] When an agency claims this exemption, the courts may  
25 consider affidavits from those with direct knowledge of and responsibility  
for the investigation. [cite omitted]

26                   *Koenig v. Thurston County, supra*, 2010 WL 1309617, p. 10 of 24.

27                   In *Newman v. King County*, 133 Wn.2d 565, 947 P.2d 712 (1997), the Court approved the two  
28 step analysis for determination of the scope of the effective law enforcement exemption. First, the  
29 documents must have been "compiled by law enforcement." Second, the Court evaluates whether the  
30 document(s) is essential to effective law enforcement. *Newman v. King County, supra*, 133 Wn.2d at

1 573. There is no question that the documents in this case were compiled by law enforcement such that  
2 prong one is met. The second step is to determine whether the investigation is leading toward an  
3 enforcement proceeding. The *Newman* Court cites approvingly to *NLRB v. Robbins*, 437 U.S. 214, 223-  
4 224 (1978) for the proposition that the Court may feasibly make a " 'generic determination' about what is  
5 essential for effective law enforcement." *Id.* The *Newman* Court then adopts the Federal Court's three  
6 part inquiry from the objecting agency. Consideration should be given to:

- 7 (1) Affidavits by people with direct knowledge of and responsibility for  
8 the investigation . . . , (2) whether resources are allocated to the  
9 investigation; and (3) whether enforcement proceeding are [sic]  
10 contemplated.

11 *Id.*

12 The differences between the *Newman* case and the instant matter are clear. *Newman* was a  
13 cold, 25 year old case which had not yet been charged. The *Davis, et al.* cases are pending charges and  
14 in fact one (Latonya Clemmons) is currently in trial. Although Defendants argue that the investigation is  
15 ongoing, it would appear, absent further factual input from the charging agency, that the charging  
16 decisions have been made and the investigation has concluded, that is, with one exception. The decision  
17 whether to convert the case of Darcus Allen to a capital prosecution has not been made. Counsel for Mr.  
18 Allen represents that this decision must be made on or before July 15, 2010. Therefore, as to that  
19 charge, the investigation is ongoing.

20 The *Newman* analysis presumes the reviewing Court's need for the thoughts, impressions and  
21 opinions of those involved in the ongoing investigation in order to make conclusions as to whether the  
22 exemption of "effective law enforcement" applies. Since the compiling agency is not the objecting party  
23 and has not (to this Court's knowledge) supplied any affidavits, opinions, reports or impressions regarding  
24 the ongoing nature of this investigation, the record does not allow for a "generic determination" as  
25 contemplated by the *Newman* Court. Rather, the Court must rely on the documents submitted, the  
briefing of the parties and the law and the facts of the case(s). Because the Court relies on the  
exemption in *RCW 42.56.540* and the reasoning below, the Court does not request further factual  
explanation from the compiling agency.



### ENDANGERING OF FAIR TRIAL RIGHTS

This Court has long recognized that adverse publicity can endanger the ability of a defendant to receive a fair trial. [cites omitted] To safeguard the due process rights of the accused, a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity. [cites omitted] And because of the Constitution's pervasive concern for these due process rights, a trial judge may surely take protective measures even when they are not strictly and inescapably necessary.

*Gannett Co. Inc. v. DePasquale*, 443 U.S. 368, 378 (1979).

The above Court determined the open, public trial rights of the press in the context of a motion to suppress and whether the hearing should be closed to the public. *Gannett Co. Inc. v. DePasquale*, *supra*. Holding that the Defendant's right to a fair, impartial jury outweighed the media's right to be present, the Court stated:

There can be no blinking the fact that there is a strong societal interest in public trials. Openness in Court proceedings may improve the quality of testimony, induce unknown witnesses to come forward with relevant testimony, cause all trial participants to perform their duties more conscientiously, and generally give the public an opportunity to observe the judicial system. [cite omitted] But there is a strong societal interest in other constitutional guarantees extended to the accused as well. The public, for example, has a definite and concrete interest in seeing that justice is swiftly and fairly administered. [cite omitted] Similarly, the public has an interest in having a criminal case heard by a jury, an interest distinct from the defendant's interest in being tried by a jury of his peers. [cite omitted]

*Gannett Co. Inc. v. DePasquale*, *supra*.

The right to a public trial is a constitutional guarantee which belongs to the Defendant, not the general public. *Id.* At 381. Members of the public have no constitutional right to attend criminal trials. *Id.* at 391.

The facts of the *Gannett* case are analogous to the instant matter because Defendants urge this Court to restrict access to the PCSO documents based in part on each Defendant's right to a fair, impartial jury uninfluenced by pretrial exposure to potential evidence. One of the requesting parties, the Seattle Times, argues that the objecting parties failed to submit evidence to support factually their position. The Seattle Times is correct; Defendants do not provide data, statistics, print or video stories to substantiate their position that pretrial publicity will jeopardize Defendants' right to a fair and impartial jury.

The Court takes judicial notice of the extraordinary level of local, state and national attention that this story garnered for days and weeks following the November 29, 2009 event. By recognizing the extensive coverage of these cases by the media, the Court does not suggest that a fair and impartial jury and proceeding cannot occur in Pierce County; however, further release of investigative materials and details may jeopardize that right which in turn justifies exemption under the PRA.

#### DOCUMENTS REVIEWED

The Court reviewed the following documents which were provided by CD and indexed as follows (the number in parentheses represents the number of subsections under each heading):

##### "Files Currently on the Disc (12)"

- ATF Reports (2)
- Interviews and Statements (27)
- King County Housing Authority
- King County Sheriff (47)
- PCSD Case Reports (154)
- Related PCSD Case Reports (9)
- Seattle Police Department (12)
- Tacoma Police Department (8)
- Washington State Fusion Center
- Case Summary – Time Line
- Major Incident Log
- Photo Lineups

Based on the above legal analysis and the Court's review of the documents produced, the Court hereby finds that the documents are producible or exempt for the reasons noted below.

1. ATF Reports  
*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
2. Witness/Suspect Statements (Including Tacoma Police Department Officer Notes)  
*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
3. King County Housing Authority & Financial/Protected Housing Documents  
*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*
4. King County Sheriff  
*Event log – Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Vehicle Impound – *Exempt – Endangers the fair trial rights of the Defendant(s).*  
RCW 42.56.540

2 Officer Reports – *Exempt – Endangers the fair trial rights of the Defendant(s).*  
RCW 42.56.540

3  
4 5. Related Pierce County Sheriff Department

5 *All records related to Martin Santo Lewis should be released within five (5) days of*  
6 *5/28/2010, unless further objection is received.*

6 09-333-743-1 pdf

7 *Exempt – Endangers the fair trial rights of the Defendant(s).*  
8 *RCW 42.56.540*

9 09-131-011-2 pdf

10 *Exempt – Endangers the fair trial rights of the Defendant(s).*  
11 *RCW 42.56.540*

11 09-131-0111-3 pdf

12 *Exempt – Endangers the fair trial rights of the Defendant(s).*  
13 *RCW 42.56.540*

13 09-131-0111-4 pdf

14 *Exempt – Endangers the fair trial rights of the Defendant(s).*  
15 *RCW 42.56.540*

15 09-131-0111-5 pdf

16 *Exempt – Endangers the fair trial rights of the Defendant(s).*  
17 *RCW 42.56.540*

18 09-333-0743-1 pdf

19 *Not exempt - shall be produced by PCSO within five (5) days of 5/28/10, unless further*  
20 *objection is received.*

20 09-333-0743-2 pdf

21 *Not exempt - shall be produced by PCSO within five (5) days of 5/28/10, unless further*  
22 *objection is received.*

22 09-334-0023 FIR.pdf

23 *Exempt – Endangers the fair trial rights of the Defendant(s).*  
24 *RCW 42.56.540*

09-355-0721 FIR.pdf

*Exempt – Endangers the fair trial rights of the Defendant(s).  
RCW 42.56.540*

6. Washington State Fusion Center Intelligence Reports

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7. Seattle Police Department Reports

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

8. Major Incident Log

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9. Tacoma Police Department Files

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

10. Tacoma Police Department Forensics Reports

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11. Pierce County Sheriff Department Incident Reports

Att Summary Sheet 2-9-10.pdf

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Attachment Summary.pdf

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Incident No. 093330363.1

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Incident No. 093330363.2

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Incident No. 093330363.3

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Incident No. 093330363.4

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.5

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.6

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.7

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.8

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.9

10 *Not exempt - shall be produced by PCSO within five (5) days of 5/28/10, unless further  
objection is received.*

11 Incident No. 093330363.10

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.11

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.12

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.13

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.14

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.15

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.16

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.17

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.18

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.19

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.20

6 *Not exempt - shall be produced by PCSO within five (5) days of 5/28/10, unless further  
objection is received.*

7 Incident No. 093330363.21

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.22

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.23

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.24

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.25

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.26

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.27

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.28

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.29

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.30

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.31

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.32

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.33

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.34

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.35

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.36

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.37

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.38

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.39

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.40

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.41

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.42

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.43

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.44

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.45

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.46

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.47

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.48

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.49

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.50

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.51

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.52

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.53

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.54

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.55

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.56

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Incident No. 093330363.57



1        *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

2        Incident No. 093330363.58

3        *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

4        Incident No. 093330363.59

5        *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

6        Incident No. 093330363.60

7        *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

8        Incident No. 093330363.61

9        *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

10       Incident No. 093330363.62

11       *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

12       Incident No. 093330363.63

13       *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

14       Incident No. 093330363.64

15       *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

16       Incident No. 093330363.65

17       *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

18       Incident No. 093330363.66

19       *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

20       Incident No. 093330363.67

21       *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

22       Incident No. 093330363.68

23       *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

24       Incident No. 093330363.69

25       *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

      Incident No. 093330363.70

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.71

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.72

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.73

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.74

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.75

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.76

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.77

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.80

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.81

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.82

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.83

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.84

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.85

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.86

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.87

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.88

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.89

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.90

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.91

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.92

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.93

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.94

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.95

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.96

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.97

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.98

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.99

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.100

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.101

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.102

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.103

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.104

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.105

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.106

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.107

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.108

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.109

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.110

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.111

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.112

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.113

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.114

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.115

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.116

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.117

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.118

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.119

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.120

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.121

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.122

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.123

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.124

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.125

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.126

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.127

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.128

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.129

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.130

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.131

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.132

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.133

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.134

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.135

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.136

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.137

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

1 Incident No. 093330363.138

2 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

3 Incident No. 093330363.139

4 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

5 Incident No. 093330363.140

6 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

7 Incident No. 093330363.141

8 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

9 Incident No. 093330363.142

10 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

11 Incident No. 093330363.143

12 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13 Incident No. 093330363.144

14 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

15 Incident No. 093330363.145

16 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

17 Incident No. 093330363.146

18 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

19 Incident No. 093330363.147

20 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

21 Incident No. 093330363.148

22 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

23 Incident No. 093330363.149

24 *Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

25 Incident No. 093330363.150

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Incident No. 093330363.151

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Incident No. 093330363.155

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Prop rep 09-333-0363-31.pdf

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

Property Report.pdf

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

12. Case Summary

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

13. Major Incident Log

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

14. Photo Lineup

*Exempt – Endangers the fair trial rights of the Defendant(s). RCW 42.56.540*

#### ORDER

Based on the foregoing analysis, review and findings, the Court hereby orders as follows:

1. The Court incorporates the subsection entitled "Documents Reviewed" above as though fully set forth herein and orders that the indexed documents are exempt from disclosure for the reasons noted with the exception(s) of:

*Certain documents under the section "Related Pierce County Sheriff Department Cases" and specifically those which relate to Martin Santo Lewis (09-333-0743-1.pdf and 09-333-0743-2.pdf).*

*Pierce County Sheriff Department Incident reports: 093330363.9 and 093330363.20*

*The above documents shall be produced by PCSO within five (5) days of 5/28/2010, unless further objection is received.*

2. The parties shall have 6 court days from the date of this order to file written specific objection to this Court's decision and request an opportunity for oral argument. If no objection and/or request is made prior to the close of business (4:30 p.m.) on Friday, May 28, 2010, this order shall be



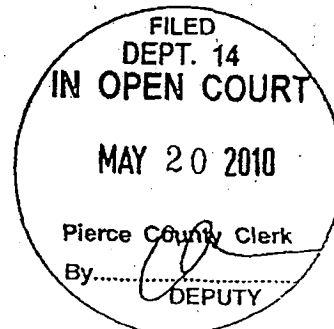
1 final and the non-exempt documents referenced under (1) above shall be released to the requesting  
2 parties within five (5) days;

3 3. The Court's order signed by Judge Arend on May 7, 2010, staying disclosure by the  
4 PCSO is hereby extended to May 28, 2010, to allow for further objection and/or request for argument; and

5 4. This order shall be subject to revision as soon as the last of the above captioned cases is  
6 concluded.

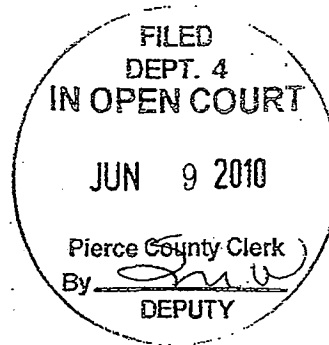
7 DATED this 20th day of May, 2010.

8   
9 JUDGE SUSAN K. SERKO



# **EXHIBIT B**

**(Seattle Times Co. v. Sarko)**



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

EDDIE LEE DAVIS,

DOUGLAS EDWARD DAVIS,

RICKEY HINTON,

QUIANA M. WILLIAMS,

LATRECIA NELSON,

DARCUS ALLEN,

Defendants.

NO. 09-1-05374-1

NO. 09-1-05375-0

NO. 09-1-05340-6

NO. 09-1-05452-7

NO. 09-1-05453-5

NO. 10-1-00938-0

**ORDER SEALING EXHIBITS  
ADMITTED IN STATE V.  
CLEMMONS, PIERCE COUNTY  
CAUSE NO. 09-1-05523-0**

THIS MATTER having come on for hearing before the Honorable Judge Arend, on an Ex Parte Motion brought by John O'Melveny, attorney for Defendant Eddie Davis, and the court having reviewed the Order to Seal and the Findings And Order Re: In Camera Review of PCSO Documents signed and entered by Judge Serko on May 20, 2010, and the court being fully advised, now, therefore, it is hereby:

ORDER SEALING EXHIBITS - 1

D:\FILES\Current Files\DAVIS EDDIE LEE (DAC- Rendering Crim Assist)\PT EADINGS\Order Sealing Exhibits.wpd

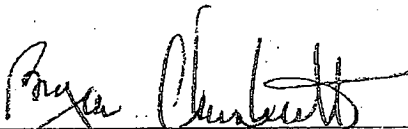
JOHN P O MELVENY  
Attorney at Law  
15 No Broadway, Suite A  
Tacoma, WA 98403-3120  
253 597 8979

**ORIGINAL**

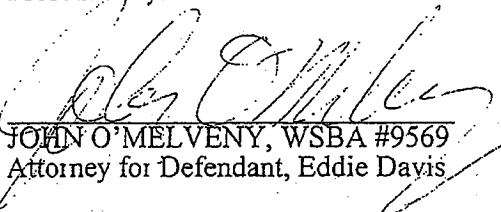
and a hearing for all interested persons to  
present arguments. A hearing on this matter will be  
held on June 25, 2010, at 1:30 PM or sooner as the court may  
ORDERED that all exhibits admitted in the case of State v. Clemmons, Pierce County  
order

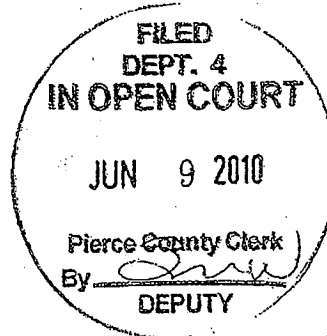
Cause No. 09-1-05523-0 shall be sealed pending examination of these exhibits by defense  
counsel. If defense counsel objects to the release of any of these exhibits, a hearing with notice  
to all parties shall be scheduled.

DATED this 9<sup>th</sup> day of June, 2010.

  
Judge Stephanie Arend PJ

Presented by:

  
JOHN O'MELVENY, WSBA #9569  
Attorney for Defendant, Eddie Davis



ORDER SEALING EXHIBITS - 2

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JOHN P O MELVENY  
Attorney at Law  
15 No Broadway, Suite A  
Tacoma, WA 98403-3120  
253 597 8979

# **EXHIBIT C**

**(Seattle Times Co. v. Sarko)**

IN COUNTY FILED  
CLERK'S OFFICE  
A.M. MAR 18 2010 P.M.  
PIERCE COUNTY, WASHINGTON  
BY KEVIN STOCK, County Clerk  
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON  
PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

EDDIE LEE DAVIS,

DOUGLAS EDWARD DAVIS,

RICKEY HINTON,

QUIANA M. WILLIAMS,

LATRECIA NELSON,

LATANYA K. CLEMMONS,

DARCUS ALLEN.

Defendants.

) Case No.: 09-1-05374-1

) 09-1-05375-0

) 09-1-05340-6

) 09-1-05452-7

) 09-1-05453-5

) 09-1-05523-0

) 10-1-00938-0

) SUMMARY OF PUBLIC RECORDS  
) REQUESTS

COMES NOW, the Sheriff of Pierce County, by and through his attorney, Craig Adams, Deputy Prosecuting Attorney and Legal Advisor to the Sheriff and provides the following summary of those who have made public records requests in this case and what records have been requested.

REQUESTOR:

1. Robert J. Hill

RECORDS REQUESTED:

1. Copies of digital still pictures from the Forza coffee shop/crime scene.

1 2. American Economy Insurance

2. All police reports, statements, color photos,  
and all other material pertaining to matter.

3 3. Christie Law Group

3. Phone calls of Maurice Clemmons from jail  
and same basic material as requested by  
Attorney Michael Hanbey, see below.

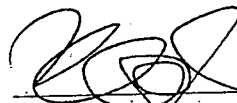
4 4. Michael Hanbey, Attorney

4. All records concerning Mr. [Maurice]  
Clemmons, "investigative reports".

5 5. Seattle Times

5. Reports of what happened inside the  
"coffee shop" [Forza]. Reports of what  
happened outside the "coffee shop" [the  
manhunt for Mr. Clemmons]. The  
documents from Bureau of Alcohol, Tobacco  
and Firearms which are "gun-trace" records  
regarding any guns taken from Mr. Maurice  
Clemmons.

12 Respectfully submitted this 18<sup>th</sup> day of March, 2010.



Craig Adams, #7808  
Deputy Prosecuting Attorney  
And Legal Advisor to the Sheriff  
930 Tacoma Avenue South  
Tacoma, WA. 98402  
(253) 798-2964

# **EXHIBIT D**

**(Seattle Times Co. v. Sarko)**





Pierce County

Sheriff's Department

930 Tacoma Avenue South  
Tacoma, Washington 98402

25 February 2010

Mr. Keith MacFie  
Attorney at Law  
Suite 210  
711 Commerce Street  
Tacoma, WA. 98402-4514

Ms. Helen Whitener  
Attorney at Law  
Suite A  
820 - 6<sup>th</sup> Avenue  
Tacoma, WA. 98405-5210

Mr. John O'Melveny  
Attorney at Law  
Suite A  
15 North Broadway  
Tacoma, WA. 98403-3120

Ms. Mary K. High  
Attorney at Law  
Suite 334  
949 Market Street  
Tacoma, WA. 98402-3696

RE: Letricia Nelson; Quianna Williams; Latanya Clemmons; Ricky Hinton; Eddie Davis;  
Douglas Davis; Darcus Allen

Dear Counsel:

I have received a public records request for all police incident reports involving Mr. Maurice Clemmons. In particular the requestor has asked for the reports on the others who were charged with aiding or abetting Mr. Clemmons.

Under the Washington State Public Records Act, RCW 42.56.540, the production of a public record may be enjoined if a person named in the record files for an appropriate injunction in this regard. I will wait until Friday, March 12, 2010 at the close of

RECEIVED

FEB 26 2010

Philip E. Thornton  
Attorney at Law

Mr. Chip Mosely  
Attorney at Law  
Suite 308  
16000 Christensen Road  
Tukwila, WA. 98188-2928

Mr. Phillip Thornton  
Attorney at Law  
Suite 201  
901 South "I" Street  
Tacoma, WA. 98405-4593

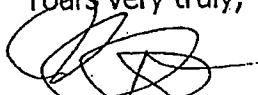
Mr. Kent Underwood  
Attorney at Law  
Suite 101  
1111 Fawcett Avenue  
Tacoma, WA. 98402-3120



business (4:30pm) to see if any of your clients obtains such an order. If not, I will provide a copy of the appropriate police incident reports to the individual making that request. If none of you intend on seeking this relief I would appreciate sooner knowing so that I might provide the requestor with the requested materials at an earlier time.

Thank you for your assistance in this regard.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Craig Adams', written over a circular stamp.

Craig Adams  
Deputy Prosecuting Attorney and  
Legal Advisor to the Sheriff

# **EXHIBIT E**

**(Seattle Times Co. v. Sarko)**

**(Defense Motions to Enjoin Release of Records)**

March 11 2010 2:58 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 09-1-05430-6

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

RICKEY HINTON,

Defendant.

NO.: 09-1-05430-6

MOTION FOR ORDER RESTRAINING THE  
PIERCE COUNTY SHERIFF FROM  
RELEASING MATERIALS

COMES NOW the Defendant RICKEY HINTON, by and through his attorney of record, Philip Thornton, and moves the above-entitled court for a protective order preventing the Pierce County Sheriff's Office and/or the Law Enforcement Support Agency from releasing any and all police reports and other unspecific documents, notes, photographs and videos pursuant to the Washington State Public Records Act, RCW 42.56, et al., The statute, RCW 42.56.040, provides the production of a public record may be enjoined if a person named in the record files for an injunction. The Defendant Rickey Hinton is a named person in the records to be produced.

This Motion is made pursuant to CrR 4.7, RCW 42.56. et al, the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution,; and Cowles v. Spokane Police

ORIGINAL

1 Department, 139 Wn.2d 472, 987 P.2d 620(1999), the Bench and Bar Guidelines and is based upon  
2 the records and files herein and upon the Declaration of Philip Thornton.

3 DATED this 9th day of March, 2010.

4 BY: 

5 PHILIP E. THORNTON

6 WSB# 20077

7 Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

RICKEY HINTON,

Defendant.

NO.: 09-1-05430-6

DECLARATION OF COUNSEL IN  
SUPPORT OF THE MOTION FOR ORDER  
RESTRAINING THE PIERCE COUNTY  
SHERIFF FROM RELEASING MATERIALS

I, PHILIP E. THORNTON, do declare and state as follows:

I, PHILIP E. THORNTON, am the attorney for the above captioned Defendant. I am an adult and competent to make this declaration. I make this declaration of my own personal knowledge and belief.

On February 26, 2010, I received a letter from Craig Adams, Deputy Prosecuting Attorney and Legal Advisor to the Pierce County Sheriff, wherein I was informed that Mr. Adams had received a public records request for all of the police reports involving Maurice Clemmons as well as the other individuals charged with aiding and abetting Mr. Clemmons. Mr. Hinton has been charged with rendering criminal assistance to Maurice Clemmons.

1 Release of the materials requested to the unnamed individual will impair effective law  
2 enforcement, hinder the on-going investigative process and violate the privacy rights of citizens,  
3 including Rickey Hinton and his family, and irreparably impair the Defendant's right to a fair trial  
4 by fair and impartial jury.

5 Mr. Adams has been given notice of this motion and has agreed to not release any materials  
6 pending the court's ruling on the motion.

7 THE UNDERSIGNED hereby certifies under penalty of perjury under the laws of the State  
8 of Washington that the foregoing statement is true and correct, based on my own personal  
9 knowledge and belief.  
10

11 DATED at Tacoma, Washington, this 9<sup>th</sup> day of March, 2010.

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14 \_\_\_\_\_  
15 PHILIP E. THORNTON, Declarant  
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29  
30



Pierce County

Sheriff's Department

930 Tacoma Avenue South  
Tacoma, Washington 98402

25 February 2010

RECEIVED

FEB 26 2010

Philip E. Thornton  
Attorney at Law

Mr. Keith MacFie  
Attorney at Law  
Suite 210  
711 Commerce Street  
Tacoma, WA. 98402-4514

Mr. Chip Mosely  
Attorney at Law  
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Tacoma, WA. 98405-5210

Mr. Philip Thornton  
Attorney at Law  
Suite 201  
901 South "I" Street  
Tacoma, WA. 98405-4593

Mr. John O'Melveny  
Attorney at Law  
Suite A  
15 North Broadway  
Tacoma, WA. 98403-3120

Mr. Kent Underwood  
Attorney at Law  
Suite 101  
1111 Fawcett Avenue  
Tacoma, WA. 98402-3120

Ms. Mary K. High  
Attorney at Law  
Suite 334  
949 Market Street  
Tacoma, WA. 98402-3696

RE: Letricia Nelson; Quianna Williams; Latanya Clemmons; Ricky Hinton; Eddie Davis;  
Douglas Davis; Darcus Allen

Dear Counsel:

I have received a public records request for all police incident reports involving Mr. Maurice Clemmons. In particular the requestor has asked for the reports on the others who were charged with aiding or abetting Mr. Clemmons.

Under the Washington State Public Records Act, RCW 42.56.540, the production of a public record may be enjoined if a person named in the record files for an appropriate injunction in this regard. I will wait until Friday, March 12, 2010 at the close of

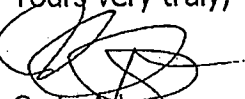




business (4:30pm) to see if any of your clients obtains such an order. If not, I will provide a copy of the appropriate police incident reports to the individual making that request. If none of you intend on seeking this relief I would appreciate sooner knowing so that I might provide the requestor with the requested materials at an earlier time.

Thank you for your assistance in this regard.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Craig Adams', written over the typed name.

Craig Adams  
Deputy Prosecuting Attorney and  
Legal Advisor to the Sheriff

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6  
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF PIERCE

9 STATE OF WASHINGTON,

10 Plaintiff,

11 vs.

12 RICKEY HINTON,

13 Defendant.  
14

NO.: 09-1-05430-6

MEMORANDUM IN SUPPORT OF  
MOTION FOR ORDER RESTRAINING THE  
PIERCE COUNTY SHERIFF FROM  
RELEASING MATERIALS

15 I. INTRODUCTION

16 The Defendant Rickey Hinton moves the above-entitled court for a protective order  
17 preventing the Pierce County Sheriff's Office and/or the Law Enforcement Support Agency from  
18 releasing any and all police reports and other unspecific documents, notes, photographs and videos  
19 pursuant to the Washington State Public Records Act, RCW 42.56, et al., The materials should not  
20 be released for the reasons stated herein, however, if the Court is inclined to entertain a request for  
21 disclosure of all the investigative materials generated by law enforcement in the course of the  
22 Maurice Clemmons' murders investigation, this Court must conduct an in camera review of the  
23 materials to determine whether the materials, or any portion of the materials, are exempt from  
24 disclosure under the Public Disclosure Act.  
25  
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31

MEMORANDUM IN SUPPORT OF  
MOTION FOR ORDER RESTRAINING  
THE PIERCE COUNTY SHERIFF FROM  
RELEASING MATERIALS  
PAGE 1

THE LAW OFFICE OF  
PHILIP E. THORNTON  
901 SOUTH "I" STREET, SUITE 201  
TACOMA, WA 98405  
TEL. (253) 383-3102

ORIGINAL

## AUTHORITY

### 1. Procedure.

RCW 42.56.540 establishes the court procedures for the protection of public records as follows:

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

The mechanics of the court's review are further addressed in Cowles Publ'g Co. v. Spokane Police Department, 139 Wn. 2d 472, 478, 987 P.2d 620 (1999). Cowles holds that the court is "qualified to evaluate the potential affect of disclosure on the trial process . . . Accordingly, to the extent nondisclosure may be necessary in a case such as this, an in camera review by the court is the proper method to determine whether nondisclosure of a document, or portions of a document, is essential to effective law enforcement." See also Limstrom, 136 Wn.2d at 615 (in camera review is the only way a court can determine what portion of a document, if any, is exempt from disclosure.) In sum, if this Court is uncertain as to whether disclosure will violate the Defendant's constitutionally protected rights to a fair trial by a fair and impartial jury, Cowles requires the trial court to conduct an in camera review and make a case by case determination of whether nondisclosure is mandated. 139 Wn.2d at 479-80; See also, State v. Jones, 96 Wn. App.369, 377, 979 P.2d 898 (1999)(in camera review of confidential materials per a claim of RCW 5.60.060(5)).

1                   2.     Disclosure will irreparably impair Mr. Hinton's ability to receive a fair trial  
2                             by a fair and impartial jury

3             The acts of Maurice Clemmons of executing four law enforcement officers were  
4     unprecedented in the history of Washington. As a result, the media coverage of his actions and the  
5     aftermath of his actions have been equally unprecedented. The media coverage was constant and  
6     pervasive. It included live coverage of the crime scene investigation, live coverage potential hiding  
7     location of Maurice Clemmons, and live coverage of the memorial service for the slain officers.  
8     The media coverage was not limited to television coverage but also spanned print, radio and  
9     internet mediums.  
10

11            Pretrial publicity jeopardizes a defendant's right to trial by a fair and impartial jury. A  
12     significant amount of the coverage in the case has been inflammatory and geared towards arousing  
13     sympathy, prejudice and passion. Statements of various individuals were not limited to the  
14     Maurice Clemmons and his actions. The media coverage also included Maurice Clemmons'  
15     family. The family has been described as "criminals" and "monsters" merely because of their  
16     familial connection. The media coverage has speculated as to how much the family knew of  
17     Maurice Clemmons' plan and if the family knew the reasons behind the homicides. The media  
18     coverage has also extensively covered the anguish and heartbreak of the victims' families – the  
19     memorial service was held in the Tacoma Dome and was televised by four local channels. Media  
20     reports around the State and even the Nation continue to report on the various actions of the  
21     judiciary, law enforcement and Maurice Clemmons family as responsible for failing to prevent the  
22     murders of the officers. The media coverage has spurred the State legislature into proposing a bill  
23     to repeal or modify the Stat's constitutional right to bail in criminal cases. The local newspaper  
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1 and local television appear at every hearing in the Defendant's case and immediately report any  
2 news on the case. Often times the media only selective reports the State's version of an argument  
3 or issue. The media rarely, if ever, reports that the Defendant has entered a plea of not guilty to the  
4 charge of rendering criminal assistance and has a constitutional right to the presumption of  
5 innocence. If the unnamed individual (presumably a news media entity) is permitted to obtain and  
6 presumably publish the information contained in the investigative files, Mr. Hinton will be further  
7 deprived of his right to a fair trial.

8 The United States Supreme Court has recognized that to safeguard the due process rights of  
9 an accused, a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial  
10 pretrial publicity, and the court may take protective measures even when they are not strictly and  
11 inescapably necessary. Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 99 S. Ct. 2898, 61 L.ed.2d  
12 608 (1979). The DePasquale Court directs a trial court to be "over cautious" in ensuring that the  
13 defendant receive a fair trial. 99 S.Ct at 2905, n. 6. Like the situation presented in DePasquale, in  
14 which the court found that publicity surrounding pretrial suppression hearings pose special risks of  
15 unfairness because it may influence public opinion against a defendant and inform potential jurors  
16 of inculpatory information that would not be admissible at trial. Moreover, the DePasquale court  
17 found that the Sixth Amendment's guarantee of a public trial is for the benefit of the defendant  
18 alone. The court further stated that even if the First and Fourteenth Amendments provided some  
19 right to the press and public to attend criminal trials, the defendant's right to a fair trial outweighed  
20 the "constitutional rights of the press and public." Here, the situation is even further removed from  
21 the public's right to be present at a public trial because the investigative materials support an on  
22 going search for additional uncharged criminal activity.  
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1 In a Washington State case also involving a pretrial suppression hearing, the Washington  
2 Supreme Court determined that closing a pretrial suppression hearing and temporarily sealing the  
3 court file was appropriate, especially in light of the conduct of the newspaper which demonstrated  
4 it would not abide by the bench-bar-press guidelines. Federated Publications, Inc. v. Kurtz, 94  
5 Wn.2d 51, 615 P.2d 440 (1980). The decision acknowledges that the press is entitled to publish  
6 information gathered in *open* judicial proceedings under Wash. Const. Art. I, Section 10, however,  
7 the State and Federal Constitutions also require the trial judge to implement protective measures  
8 against the reasonable possibility of prejudicial publicity. Kurtz, 94 Wn.2d at 59-61. In Kurtz, the  
9 court found that Art. I Section 22 "must at a minimum provide that an accused have an impartial  
10 jury free from outside influences and that the balance is never weighed against the accused, the  
11 public's right of access under section 10 must be interpreted in light of these requirements. Kurtz  
12 at 61, citations omitted. Our situation is even more compelling, in that here the defendant has not  
13 impeded the press's access to open public hearings, but rather seeks to ensure his right to a fair trial  
14 by an impartial jury.  
15

16  
17 Bench Press Bar Guidelines address these very concerns and provide:

- 18 2. The release of certain types of information by law  
19 enforcement personnel, the bench and the bar and publication  
20 thereof by news media generally tends to create dangers of  
21 prejudice without serving a significant law enforcement or  
22 public interest function. Therefore, all concerned should be  
23 aware of the dangers of prejudice in making pretrial public  
24 disclosures of the following:
- 25 (a) Opinion about a defendant's character, guilt or innocence.
  - 26 (b) Admissions, confessions or the contents of statements or  
27 alibis attributable to a defendant
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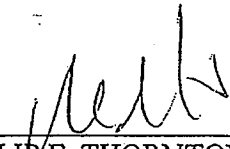
- 1 (c) Opinions about the results of investigative procedures, such  
2 as fingerprints, polygraphs examinations, ballistic tests or  
3 laboratory tests.  
4 (d) Statements concerning the credibility or anticipated testimony  
5 of prospective witnesses.  
6 (e) Opinions concerning evidence or argument in the case,  
7 whether or not anticipated that such evidence or argument  
8 will be used at trial.

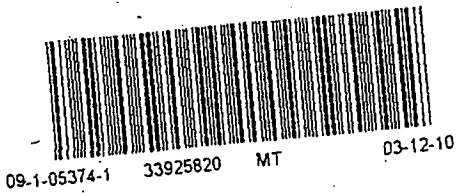
9 All of these types of prejudicial information and more are contained within the documents  
10 requested by the unnamed requested of the law enforcement materials.

11 **CONCLUSION**

12 Mr. Hinton requests the court deny the request for all investigative materials generated in  
13 the Maurice Clemmons' criminal investigation and the matter concerning the accused defendants'  
14 proceedings for the reasons argued above. Mr. Hinton urges the court to find the materials to be  
15 exempt from disclosure because the publicity that would flow from the publication of the law  
16 enforcement investigative materials would deny Mr. Hinton a fair and impartial trial and fair an  
17 unbiased jury

18 DATED this 9th day of March, 2010.

19 BY:   
20 PHILIP E. THORNTON  
21 WSB# 20077  
22 Attorney for Defendant  
23  
24  
25  
29  
30



FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAR 11 2010 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY W DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

EDDIE LEE DAVIS,

Defendant.

NO.: 09-1-05374-1

MOTION FOR ORDER RESTRAINING THE  
PIERCE COUNTY SHERIFF FROM  
RELEASING MATERIALS

COMES NOW the Defendant EDDIE LEE DAVIS, by and through his attorney of record, John P. O'Melveny, and moves the above-entitled court for a protective order preventing the Pierce County Sheriff's Office and/or the Law Enforcement Support Agency from releasing any and all police reports and other unspecific documents, notes, photographs and videos pursuant to the Washington State Public Records Act, RCW 42.56, et al., The statute, RCW 42.56.040, provides the production of a public record may be enjoined if a person named in the record files for an injunction. The Defendant Eddie Lee Davis is a named person in the records to be produced.

This Motion is made pursuant to CrR 4.7, RCW 42.56. et al, the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution,; and Cowles v. Spokane Police



1 Department, 139 Wn.2d 472, 987 P.2d 620(1999), the Bench and Bar Guidelines and is based upon  
2 the records and files herein and upon the Declaration of John P. O'Melveny.

3 DATED this 10<sup>th</sup> day of March, 2010.

4 BY: 

5 JOHN P. O'MELVENY

6 WSB# 9569

7 Attorney for Defendant



09-1-05374-1 33925815 MMS 03-12-10

FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAR 11 2010 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY W DEPUTYIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

EDDIE LEE DAVIS,

Defendant.

NO.: 09-1-05374-1

MEMORANDUM IN SUPPORT OF  
MOTION FOR ORDER RESTRAINING THE  
PIERCE COUNTY SHERIFF FROM  
RELEASING MATERIALS

## I. INTRODUCTION

The Defendant EDDIE LEE DAVIS moves the above-entitled court for a protective order preventing the Pierce County Sheriff's Office and/or the Law Enforcement Support Agency from releasing any and all police reports and other unspecific documents, notes, photographs and videos pursuant to the Washington State Public Records Act, RCW 42.56, et al. The materials should not be released for the reasons stated herein, however, if the Court is inclined to entertain a request for disclosure of all the investigative materials generated by law enforcement in the course of the Maurice Clemmons' murders investigation, this Court must conduct an in camera review of the materials to determine whether the materials, or any portion of the materials, are exempt from disclosure under the Public Disclosure Act.

MEMORANDUM IN SUPPORT OF  
MOTION FOR ORDER RESTRAINING  
THE PIERCE COUNTY SHERIFF FROM  
RELEASING MATERIALS  
PAGE 1

THE LAW OFFICE OF  
JOHN P. O'MELVENY  
15 NORTH BROADWAY, SUITE A  
TACOMA, WA 98403

TEL. (253) 597-8979

**ORIGINAL**

## AUTHORITY

### 1. Procedure.

RCW 42.56.540 establishes the court procedures for the protection of public records as follows:

The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice.

The mechanics of the court's review are further addressed in Cowles Publ'g Co. v. Spokane Police Department, 139 Wn. 2d 472, 478, 987 P.2d 620 (1999). Cowles holds that the court is "qualified to evaluate the potential affect of disclosure on the trial process . . . Accordingly, to the extent nondisclosure may be necessary in a case such as this, an in camera review by the court is the proper method to determine whether nondisclosure of a document, or portions of a document, is essential to effective law enforcement." See also Limström, 136 Wn.2d at 615 (in camera review is the only way a court can determine what portion of a document, if any, is exempt from disclosure.) In sum, if this Court is uncertain as to whether disclosure will violate the Defendant's constitutionally protected rights to a fair trial by a fair and impartial jury, Cowles requires the trial court to conduct an in camera review and make a case by case determination of whether nondisclosure is mandated, 139 Wn.2d at 479-80; See also, State v. Jones, 96 Wn. App.369, 377, 979 P.2d 898 (1999) (in camera review of confidential materials per a claim of RCW 5.60.060(5)).

2. Disclosure will irreparably impair Eddie Lee Davis's ability to receive a fair trial by a fair and impartial jury

The acts of Maurice Clemmons of executing four law enforcement officers were unprecedented in the history of Washington. As a result, the media coverage of his actions and the aftermath of his actions have been equally unprecedented. The media coverage was constant and pervasive. It included live coverage of the crime scene investigation, live coverage of the potential hiding location of Maurice Clemmons, and live coverage of the memorial service for the slain officers. The media coverage was not limited to television coverage but also spanned print, radio and internet mediums.

Pretrial publicity jeopardizes a defendant's right to trial by a fair and impartial jury. A significant amount of the coverage in the case has been inflammatory and geared towards arousing sympathy, prejudice and passion. Statements of various individuals were not limited to Maurice Clemmons and his actions. The media coverage also included Maurice Clemmons' family. The family has been described as "criminals" and "monsters" merely because of their familial connection. The media coverage has speculated as to how much the family knew of Maurice Clemmons' plan and if the family knew the reasons behind the homicides. The media coverage has also extensively covered the anguish and heartbreak of the victims' families – the memorial service was held in the Tacoma Dome and was televised by four local channels. Media reports around the State and even the Nation continue to report on the various actions of the judiciary, law enforcement and Maurice Clemmons family as responsible for failing to prevent the murders of the officers. The media coverage has spurred the State legislature into proposing a bill to repeal or modify the State's constitutional right to bail in criminal cases. The local newspaper and local

1 television appear at every hearing in the Defendant's case and immediately report any news on the  
2 case. Often times the media only selectively reports the State's version of an argument or issue.  
3 The media rarely, if ever, reports that the Defendant has entered a plea of not guilty to the charge of  
4 rendering criminal assistance and has a constitutional right to the presumption of innocence. If the  
5 unnamed individual (presumably a news media entity) is permitted to obtain and presumably  
6 publish the information contained in the investigative files, Eddie Lee Davis will be further  
7 deprived of his right to a fair trial.

8  
9 The United States Supreme Court has recognized that to safeguard the due process rights of  
10 an accused, a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial  
11 pretrial publicity, and the court may take protective measures even when they are not strictly and  
12 inescapably necessary. Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 99 S. Ct. 2898, 61 L.ed.2d  
13 608 (1979). The DePasquale Court directs a trial court to be "over cautious" in ensuring that the  
14 defendant receive a fair trial. 99 S.Ct at 2905, n. 6. Like the situation presented in DePasquale, in  
15 which the court found that publicity surrounding pretrial suppression hearings pose special risks of  
16 unfairness because it may influence public opinion against a defendant and inform potential jurors  
17 of inculpatory information that would not be admissible at trial. Moreover, the DePasquale court  
18 found that the Sixth Amendment's guarantee of a public trial is for the benefit of the defendant  
19 alone. The court further stated that even if the First and Fourteenth Amendments provided some  
20 right to the press and public to attend criminal trials, the defendant's right to a fair trial outweighed  
21 the "constitutional rights of the press and public." Here, the situation is even further removed from  
22 the public's right to be present at a public trial because the investigative materials support an on  
23 going search for additional uncharged criminal activity.  
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1 In a Washington State case also involving a pretrial suppression hearing, the Washington  
 2 Supreme Court determined that closing a pretrial suppression hearing and temporarily sealing the  
 3 court file was appropriate, especially in light of the conduct of the newspaper which demonstrated  
 4 it would not abide by the bench-bar-press guidelines. Federated Publications, Inc. v. Kurtz, 94  
 5 Wn.2d 51, 615 P.2d 440 (1980). The decision acknowledges that the press is entitled to publish  
 6 information gathered in *open* judicial proceedings under Wash. Const. Art. 1, Section 10, however;  
 7 the State and Federal Constitutions also require the trial judge to implement protective measures  
 8 against the reasonable possibility of prejudicial publicity. Kurtz, 94 Wn.2d at 59-61. In Kurtz, the  
 9 court found that Art. 1, Section 22 "must at a minimum provide that an accused have an impartial  
 10 jury free from outside influences and that the balance is never weighed against the accused, the  
 11 public's right of access under section 10 must be interpreted in light of these requirements. Kurtz  
 12 at 61, citations omitted. Our situation is even more compelling, in that here the defendant has not  
 13 impeded the press's access to open public hearings, but rather seeks to ensure his right to a fair trial  
 14 by an impartial jury.  
 15

16 Bench Press Bar Guidelines address these very concerns and provide:  
 17

- 18 2. The release of certain types of information by law  
 19 enforcement personnel, the bench and the bar and publication  
 20 thereof by news media generally tends to create dangers of  
 21 prejudice without serving a significant law enforcement or  
 22 public interest function. Therefore, all concerned should be  
 23 aware of the dangers of prejudice in making pretrial public  
 24 disclosures of the following:
  - (a) Opinion about a defendant's character, guilt or innocence.
  - (b) Admissions, confessions or the contents of statements or  
 alibis attributable to a defendant

- 1 (c) Opinions about the results of investigative procedures, such  
2 as fingerprints, polygraphs examinations, ballistic tests or  
3 laboratory tests.
- 4 (d) Statements concerning the credibility or anticipated testimony  
5 of prospective witnesses.
- 6 (e) Opinions concerning evidence or argument in the case,  
7 whether or not anticipated that such evidence or argument  
8 will be used at trial.

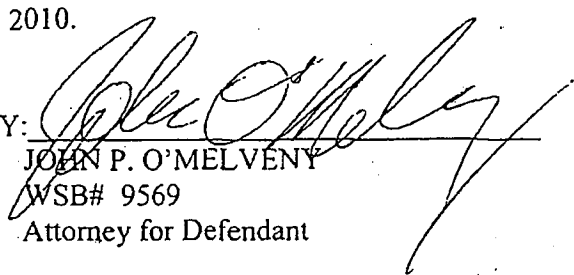
9 All of these types of prejudicial information and more are contained within the documents  
10 requested by the unnamed requested of the law enforcement materials.

### 11 CONCLUSION

12 Eddie Lee Davis requests the court deny the request for all investigative materials generated  
13 in the Maurice Clemmons' criminal investigation and the matter concerning the accused  
14 defendants' proceedings for the reasons argued above. Mr. Davis urges the court to find the  
15 materials to be exempt from disclosure because the publicity that would flow from the publication  
16 of the law enforcement investigative materials would deny Mr. Davis a fair and impartial trial and  
17 fair and unbiased jury

18 DATED this 10<sup>th</sup> day of March, 2010.

19 BY:

20   
21 JOHN P. O'MELVENY  
22 WSB# 9569  
23 Attorney for Defendant  
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09-1-05374-1

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DCLR

03-12-10

FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAR 11 2010 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY W DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

EDDIE LEE DAVIS,

Defendant.

NO.: 09-1-05374-1

DECLARATION OF COUNSEL IN  
SUPPORT OF THE MOTION FOR ORDER  
RESTRAINING THE PIERCE COUNTY  
SHERIFF FROM RELEASING MATERIALS

I, JOHN P. O'MELVENY, states as follows:

I, am the attorney for the above Defendant.

On February 26, 2010, I received a letter from Craig Adams, Deputy Prosecuting Attorney and Legal Advisor to the Pierce County Sheriff, wherein I was informed that Mr. Adams had received a public records request for all of the police reports involving Maurice Clemmons as well as the other individuals charged with aiding and abetting Mr. Clemmons. Eddie Lee Davis has been charged with rendering criminal assistance to Maurice Clemmons.

Release of the materials requested to the unnamed individual will impair effective law enforcement, hinder the on-going investigative process and violate the privacy rights of citizens,

**ORIGINAL**

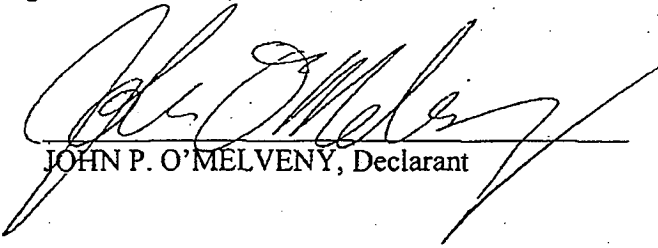


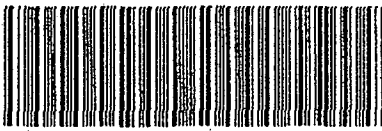
1 including Eddie Lee Davis, and irreparably impair the Defendant's right to a fair trial by a fair and  
2 impartial jury.

3 Mr. Adams has been given notice of this motion and has agreed to not release any materials  
4 pending the court's ruling on the motion.

5 THE UNDERSIGNED hereby certifies under penalty of perjury under the laws of the State  
6 of Washington that the foregoing statement is true and correct, based on my own personal  
7 knowledge and belief.

8 DATED at Tacoma, Washington, this 10<sup>th</sup> day of March, 2010.

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12 JOHN P. O'MELVENY, Declarant  
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10-1-00938-0 33932259 MT 03-15-10

FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAR 12 2010 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN BYRON, County Clerk  
BY \_\_\_\_\_ DEPUTY

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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTYSTATE OF WASHINGTON,  
Plaintiff,

v.

DARCUS ALLEN,  
Defendant.

NO. 10-1-00938-0

MOTION AND DECLARATION IN  
SUPPORT OF ORDER RESTRAINING  
THE PIERCE COUNTY SHERIFF FROM  
RELEASING MATERIALS

COMES NOW defendant Allen in this matter, by and through his attorney, Mary Kay High, and moves this court for a Protective Order preventing the Pierce County Sheriff's Office and/or Law Enforcement Support Agency from releasing any and all police reports and other unspecified documents, notes, photographs and/or videos pursuant to a Washington State Public Records Act, RCW 42.56 *et seq.* The statute provides that the production of public records may be enjoined. RCW 42.56.540.

RCW 42.56.540 provides "The examination of any specific record may be enjoined if, upon motion and affidavit by an agency or its representative or by person who is named in the

MOTION AND DECLARATION IN SUPPORT OF PROTECTIVE  
ORDER RESTRAINING THE PIERCE COUNTY SHERIFF  
FROM RELEASING MATERIALS - 1

MOTIONprotection order.doc -

DEPARTMENT OF ASSIGNED COUNSEL  
949 ARKET STREET, SUITE 334  
TACOMA, WASHINGTON 98402  
(253) 798-6062 Facsimile (253) 798-6715

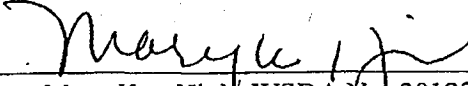
ORIGINAL

record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination clearly would not be in the public interest and would substantially and irreparably damage vital government functions."

In addition to the above quoted statutory language, this motion is based on the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution; Article 1 §§ 3 and 22 of the Washington State Constitution, Newman v. King County, 133 Wn.2d 565, 947 P. 2d 712(1997); Cowles v. Spokane Police Department, 139 Wn. 2d 472, 987 P.2d 620(1999), RCW 42.56.040, the Bench and Bar Guidelines and RPC 3.6 and 3.8.

Moreover, defendant Allen joins in the previously filed Motions, Memorandum of Law and Declarations of Counsel filed in State v. Davis, P.C. Superior Court Cause No. 09-1-05374-1 and State v. Hinton, Pierce County Superior Court Cause No. 09-1 05430-6.

DATED this 12<sup>th</sup> day of March, 2010.

  
Mary Kay High, WSBA No. 20123  
Attorney for Defendant Allen

#### DECLARATION OF MARY KAY HIGH

1. I am the court appointed attorney representing Mr. Allen.
2. On February 26, 2010, Mr. Craig Adams of the Pierce County Sheriff's Office provided notice that undisclosed parties were seeking release of all investigative

MOTION AND DECLARATION IN SUPPORT OF PROTECTIVE  
ORDER RESTRAINING THE PIERCE COUNTY SHERIFF  
FROM RELEASING MATERIALS - 2

MOTIONprotection order.doc -

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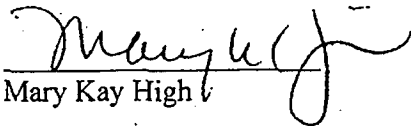
1 reports relating to Maurice Clemmons and any other person charged with assisting  
2 Mr. Clemmons. Mr. Allen is charged with four counts of aggravated murder for  
3 allegedly assisting Mr. Clemmons, and for which the State may seek the death  
4 penalty.

5  
6 3. Release of the materials requested information will impair effective law enforcement,  
7 hinder the ongoing investigative process, violate the privacy rights of citizens,  
8 including Darcus Allen and his family, and irreparably impair the defendant's right to  
9 a fair trial by a fair and impartial jury.

10 4. The Pierce County Sheriff's Office has been given notice of this motion and has  
11 agreed not to release any materials pending the Court's ruling on this motion. .

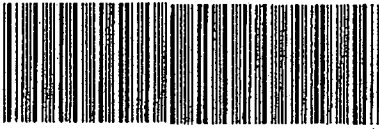
12 I DECLARE UNDER PENLTY OF PERJURY THE FOREGOING IS TRUE AND  
13 CORRECT.

14  
15 Signed this 12<sup>th</sup> day of March, 2010 at Tacoma Washington

16   
17 Mary Kay High

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MOTION AND DECLARATION IN SUPPORT OF PROTECTIVE  
ORDER RESTRAINING THE PIERCE COUNTY SHERIFF  
FROM RELEASING MATERIALS - 3

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10-1-00938-0 33932250 MMS 03-15-10

FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAR 12 2010 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOK, County Clerk  
BY \_\_\_\_\_ DEPUTY7  
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## SUPERIOR COURT OF THE STATE OF WASHINGTON

10  
11

## FOR PIERCE COUNTY

12  
13STATE OF WASHINGTON,  
Plaintiff,

NO. 10-1-00938-0

14

v.

MEMORANDUM IN SUPPORT OF  
PROTECTION ORDER15  
16DARCUS ALLEN,  
Defendant.17  
18

## INTRODUCTION

19  
2021  
2223  
2425  
26

Mr. Allen, joins in the Motion brought by Defendant Ricky Hinton, P.C. Superior Court Cause No. 09-1-05430-6 and Defendant Eddie Lee Davis, Pierce County Superior Court Cause No. 09-1-05374 and adopts and incorporates the arguments made by the Hinton and Davis in support of Defendant's Motion for a Protective Order and the arguments made in this Memorandum. The materials should not be released for the reasons stated in the briefs, however, if the Court is inclined to entertain a request for disclosure of all the investigative materials generated by law enforcement in the course of the Clemmons investigation, this

MEMORANDUM IN SUPPORT OF MOTION FOR  
PROTECTIVE ORDER - I

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ORIGINAL

1 Court must conduct an in camera review of the materials to determine whether the materials,  
2 or any portion of the materials, are exempt from disclosure under the Public Records Act.

#### 3 4 AUTHORITY

##### 5 1. Procedure.

6 RCW 42.56.540 establishes the court procedures for the protection of public  
7 records as follows:

8 The examination of any specific public record may be  
9 enjoined if, upon motion and affidavit by an agency or  
10 its representative or a person who is named in the  
11 record or to whom the record specifically pertains, the  
12 superior court for the county in which the movant  
13 resides or in which the record is maintained, finds that  
14 such examination would clearly not be in the public  
15 interest and would substantially and irreparably damage  
16 any person, or would substantially and irreparably  
17 damage vital government functions. An agency has the  
option of notifying persons named in the record or to  
whom the record specifically pertains that release of a  
record has been requested. However, this option does  
not exist where the agency is required by law to provide  
such notice.

18 The mechanics of the court's review are further addressed in Cowles Publ'g Co. v.  
19 Spokane Police Department, 139 Wn. 2d 472, 478, 987 P.2d 620 (1999). Cowles holds that  
20 the court is "qualified to evaluate the potential affect of disclosure on the trial process . . .  
21 Accordingly, to the extent nondisclosure may be necessary in a case such as this, an in  
22 camera review by the court is the proper method to determine whether nondisclosure of a  
23 document, or portions of a document, is essential to effective law enforcement." See also  
24 Limstrom, 136 Wn.2d at 615 (in camera review is the only way a court can determine what  
25 portion of a document, if any, is exempt from disclosure.) In sum, if this Court is uncertain as  
26 to whether disclosure will violate the Defendant's constitutionally protected rights to a fair

1 trial by a fair and impartial jury, Cowles requires the trial court to conduct an in camera  
 2 review and make a case by case determination of whether nondisclosure is mandated. 139  
 3 Wn.2d at 479-80; See also, State v. Jones, 96 Wn. App.369, 377, 979 P.2d 898 (1999)(in  
 4 camera review of confidential materials per a claim of RCW 5.60.060(5)).

5  
 6 2. Disclosure will irreparably impair Mr. Allen's ability to receive a fair  
 7 trial by a fair and impartial jury

8 As has been observed many times, death, as a punishment is different. When a  
 9 defendant's life is at stake, the courts have been particularly sensitive to insure that every  
 10 safeguard is observed. Gregg v. Georgia, 428 U.S. 153, 187, 49 L. Ed. 2d 859, 96 S. Ct. 2909  
 11 (1976). State v. Frampton, 95 Wn.2d 469, 627 P.2d 922 (1981). Criminal statutes involving  
 12 the death penalty must be construed in a manner which is particularly sensitive to the  
 13 protections afforded the defendant.

14 This is the potential capital prosecution of Darcus Allen and these proceedings could  
 15 result in his death by lethal injection or hanging. The State, through the Prosecuting Attorney,  
 16 has announced filed a Notice of Special proceeding indicating it may seek to kill Darcus  
 17 Allen for his alleged association with Maurice Clemmons. "The fundamental respect for  
 18 humanity underlying the Eighth Amendment's prohibition against cruel and unusual  
 19 punishment gives rise to a special need for reliability in the determination that death is the  
 20 appropriate punishment in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584, 108  
 21 S.Ct. 1981, 100 L.Ed.2d. 575 (1988) (quoting Gardner v. Florida, 430 U.S. 349, 363-64, 97  
 22 S.Ct. 1197, 51 L.Ed.2d 393 (1977) (White, J., concurring) (quoting Woodson v. North  
 23 Carolina, 428 U.S. 280, 305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976). It is now well established  
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MEMORANDUM IN SUPPORT OF MOTION FOR  
 PROTECTIVE ORDER - 3

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1 that when a defendant's life is at stake, a court must be "particularly sensitive to insure that  
2 every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187, 96 S.Ct. 2909, 49  
3 L.Ed.2d 859 (1976). As this Court is acutely aware, the penalty of death is qualitatively and  
4 profoundly different from any other sentence. e.g. Ford v. Wainwright, 477 U.S. 399, 411,  
5 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) ("In capital proceedings generally, this Court has  
6 demanded that fact finding procedures aspire to a heightened standard of reliability. This  
7 especial concern is a natural consequence of the knowledge that execution is the most  
8 irremediable and unfathomable of penalties; that death is different." (citations omitted));  
9 California v. Ramos, 463 U.S. 992, 998-99, 103 S.Ct. 3446, 77 L.Ed.2d 1171 (1983)  
10 (recognizing "the qualitative difference of death from all other punishments"); Eddings v.  
11 Oklahoma, 455 U.S. 104, 110, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982) ("the imposition' of death  
12 by public authority is. . . profoundly different from all other penalties"). For this reason, our  
13 system of justice must go "to extraordinary measures to ensure that the prisoner sentenced to  
14 be executed is afforded process that will guarantee, as much as is humanly possible, that the  
15 sentence was not imposed out of whim, passion, prejudice, or mistake." Eddings v.  
16 Oklahoma, 455 U.S. at 118 (O'Connor, J. concurring) (emphasis added). These  
17 "extraordinary measures" must be taken at both stages of any capital trial. Beck v. Alabama,  
18 447 U.S. 625, 638, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1980).

22 In this particular case the wholesale release of police investigative records would  
23 impair the trial process, violate the constitutional rights of the defendant, and hinder an  
24 ongoing investigation by law enforcement. Although the Supreme Court held in Cowles  
25 Publishing Company v. Spokane Police Department, 139Wn.2d 472, 987 P.2d 620 (1999) that  
26

MEMORANDUM IN SUPPORT OF MOTION FOR  
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once an arrest has been made police investigative records are presumptively available to the public, it also clearly stated that presumption can be overcome in a specific case:

**Although we agree with the Department that nondisclosure may, under specific circumstances, still be necessary to protect pending enforcement proceedings in an individual case,** courts are as qualified to review the potential affect of disclosure on the trial process as are the police or prosecutor. The protection of enforcement proceedings is not a circumstance where the police, exercising their professional judgment, are in a better position to make disclosure decisions. Accordingly, to the extent nondisclosure may be necessary in a case such as this, an in camera review by the court is the proper method to determine whether nondisclosure of a document, or portions of a document, is essential to effective law enforcement. See Limstrom, 136 Wash .2d at 61 5,963 P.2d 869 (in camera review is the only way a court can determine what portion of a document, if any, is exempt from disclosure).

Nor does a defendant's constitutional right to a fair trial compel categorical nondisclosure of police investigative records. Facts regarding pending criminal prosecutions are often made public prior to trial. This rarely results in the inability to impanel a fair and impartial jury. Similarly, the fact that allegations have not yet been proven is not persuasive of the need to provide blanket protection for purposes of a defendant's privacy. When a criminal suspect is arrested and charged with a crime there must be some factual basis for this, whether or not all or any of the allegations can be proven beyond a reasonable doubt at trial. The general public is well aware that a person is innocent until proven guilty. Rarely would criminal allegations so devastate the reputation of the suspect that nondisclosure would be necessary to protect against the effect of false accusation. Again, **to the extent protection of the trial process or the privacy rights of a suspect re essential in any given case, the trial court should make that factual determination on a case-by-case basis.** In any event, under the facts of this case, we are unpersuaded by the Department's argument. At the time the Department denied the disclosure requests at issue, it had already made all the pertinent details public. Thus, there was no further information left to protect.

1  
2 In sum, we hold in cases where the suspect has been  
3 arrested and the matter referred to the prosecutor, any potential  
4 danger to effective law enforcement is not such as to warrant  
5 categorical nondisclosure of all records in the police  
6 investigative file. In such cases, to the extent nondisclosure of  
7 records or parts of records is nevertheless necessary, the trial  
8 court should conduct an in camera review and make a case-by-  
9 case determination of whether nondisclosure is essential to  
10 effective law enforcement.

11 139 Wn.2d at 478-80 (emphasis added).

12 Unlike the Supreme Court's 1999 Cowles decision, this is not a simple DUI case. The  
13 charges here are aggravated murder, and the case has already generated intense publicity. To  
14 hand the police investigative file to media and undisclosed requestors would invite even more  
15 press coverage and raise significant fair trial concerns. Moreover, unlike in *Cowles* the Pierce  
16 County Sheriff's Department has not already made all the pertinent details public, according  
17 to the Supreme Court:

18 In any event, under the facts of this case, we are unpersuaded  
19 by the Department's argument. At the time the Department  
20 denied the disclosure requests at issue, it had already made all  
21 the pertinent details public. Thus, there was no further  
22 information left to protect.

23 139 Wn.2d at 479. The result in Cowles may well have been different had the Department not  
24 already released all the pertinent information. Here, the Pierce County Sheriff's Office has  
25 not released its investigative materials. Both for this reason, and because this is a highly  
26 complex capital case, the result reached in Cowles is not a proper one for this case.

MEMORANDUM IN SUPPORT OF MOTION FOR  
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Also the issue of pretrial release of law enforcement investigative materials is expressly restricted by the Rules of Professional Conduct. The Defense Counsel, Sheriff's Office, and presumably, the Pierce County Prosecuting Attorney's Office, take these rules very seriously. These rules do to defense counsel, prosecutors and law enforcement, and expressly regulate pretrial disclosures. Further, the Public Records Act itself recognizes exemptions not only under RCW 42.56 *et seq* but also under any "other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070. The Rules of Professional Conduct are promulgated with the approval of the Supreme Court pursuant to the State Bar Act, RCW 2.48.060. The following rules, then, do have the force of statutory law and do create an exemption to the Public Records Act:

### **RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR**

The prosecutor in a criminal case shall:

(e) Exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under rule 3.6. (Emphasis added.)

Rule 3.6 and the Guidelines thereunder in turn provide as follows:

### **RULE 3.6 TRIAL PUBLICITY**

A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

## Guidelines for Applying RPC 3.6

### I. Criminal.

A. The kind of statement referred to in rule 3.6 which may potentially prejudice criminal proceedings is a statement which relates to:

(1) The character, credibility, reputation or criminal record of a suspect or defendant;

(2) The possibility of a plea of guilty to the offense or the existence or contents of a confession, admission or statement given by a suspect or defendant or that person's refusal or failure to make a statement;

(3) The performance or results of any investigative examination or test such as a polygraph examination or a laboratory test or the failure of a person to submit to an examination or test;

(4) Any opinion as to the guilt or innocence of any suspect or defendant;

(5) The credibility or anticipated testimony of a prospective witness; and

(6) Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial. (Emphasis added.)

\*\*\*

The Supreme Court did not address these rules and guidelines in Cowles, but at a minimum they would seem to be an appropriate consideration when determining whether the "protection of the trial process or the privacy rights of a suspect are essential in any given case," as required by Cowles, supra, 139 Wn.2d at 479. If it is unethical for prosecutor or police to make an extrajudicial statement, how can materials containing the same information be public?

In counsel's declaration supporting a restraining order in this case, counsel for Mr. Allen states that release of the requested material would "irreparably impair the defendant's right to a fair trial by a fair and impartial jury." The Court can certainly take judicial notice of

1 the extraordinary amount of press coverage which has attended the plea proceedings in  
 2 Spokane County and the instant prosecution in Pierce County. Given the stakes involved and  
 3 the resources brought to bear, the defense, the State, the Court and, the public are all vitally  
 4 interested in having this aggravated murder case lawfully and properly brought to trial. The  
 5 paramount right of the defendant in a capital case to due process and a fair trial under the  
 6 Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 3  
 7 and 22 of the Washington Constitution requires that such investigative materials not be  
 8 released while the prosecution is pending. This is not a case about access to hearings and  
 9 trial by the press and the public. The hearings have been open and the trial will be open.

### 12 3. The Records Are Exempt Under Newman

13  
 14 As noted that, unlike Cowles Publishing Company v. Spokane Police Department,  
 15 supra., this is not a DUI I case. The parameters of such a case are commonly known and well  
 16 defined; the investigation involved in Cowles was complete when the matter was referred to  
 17 the prosecutor. Here, the investigation involves a nationally reported multiple law  
 18 enforcement homicide and is ongoing. This is a huge distinction. This case is less like  
 19 Cowles and more like Newman v. King County, 133 Wash.2d 565, 575, 947 P.2d 712 (1997),  
 20 which held that " RCW 42.17.310(1)(d)<sup>1</sup> provides a broad categorical exemption from  
 21 disclosure all information contained in an open active police investigation file." (Emphasis  
 22

23  
 24  
 25  
 26 <sup>1</sup> Recodified at RCW 42.56.210.

1 added.) The pendency of an open police investigation was determinative in Newman, where  
2 the Court stated its holding as follows:

3       The County has shown they and the FBI have personnel  
4 assigned to the case. Evidence was presented by individuals  
5 responsible for the investigation who stated the case was still  
6 open and enforcement proceedings were contemplated. The  
7 evidence also establishes the documents requested cannot be  
8 disclosed because their release would impair the ability of law  
9 enforcement to share information and would inhibit the ability  
10 of police officers to determine, in their professional judgment,  
11 how and when information will be released. We hold the broad  
12 language of the statutory exemption requires the nondisclosure  
of information compiled by law enforcement and contained in  
an open and active police investigation file because it is  
essential for effective law enforcement. The language of the  
statute provides for a categorical exemption for all records and  
information in these files.

13 Newman v. King County, 133 Wash.2d at 574 (emphasis added). The same should control  
14 here, or, at a minimum, the fact that an investigation continues in the present case is a factor  
15 that should be considered by the Court in determining whether the Cowles presumption is  
16 overcome here.

17  
18 4. The Records Are Exempt As The State's Work Product

19  
20 Under Cowles, Newman, and RPC 3.6 and 3.8, then, the Court should hold that in  
21 this particular case, all the requested material is exempt from public disclosure, at least  
22 during the pendency of the criminal prosecution. In the alternative, if not categorically  
23 exempt, major portions of these materials are exempt under specific provisions of the Public  
24 Records Act. For example, the evaluative and organizational work product of the prosecution  
25 team is not available to the defense and is obviously not available to the press for publication.  
26

MEMORANDUM IN SUPPORT OF MOTION FOR  
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1 Moreover, for public record purposes the underlying factual material gathered by State's  
2 litigation team is also exempt work product under RCW42.56.210. "With respect to the  
3 factual documents gathered by the prosecutor and which Mr. Limstrom had already received  
4 from other sources prior to the trial court's ruling, withhold the documents are part of the  
5 prosecutor's fact-gathering process and are work product." Limstrom v. Ladenburg, 136  
6 Wn.2d 595,614,963 P.2d 869 (1998).  
7

8 This court should not rely upon dicta from Cowles, "Generally, nothing in a police  
9 investigative file would be considered attorney work product." 139 Wn. 2d at 478. Against  
10 this "general" observation in a DUI case, however, we have here a complex aggravated  
11 murder case.  
12

13 In a case of this complexity, involving multiple crime scenes in multiple counties, it  
14 should surprise no one that since this case was referred to the Pierce county Prosecuting  
15 Attorney, there have been ongoing evaluative and organizational efforts undertaken by and  
16 under the supervision of that office.  
17

18 5 Any Tip Records Are Exempt Under The Specific Investigative  
19 Records Exemption

20 Moreover any "tip" records "contains unproved claims, often made anonymously, and  
21 accordingly involves substantial privacy rights of numerous individuals." and RCW  
22 42.56.240 exempts from disclosure:

23 Specific intelligence information and specific investigative  
24 records compiled by investigative, law enforcement and  
25 penology agencies, the nondisclosure of which is essential to  
26 effective law enforcement or for the protection of any person's  
right to privacy.

1 "Right to privacy" is in turn defined at RCW 442.56.050. The Court of Appeals has  
 2 held that "specific investigative records" exemption applies to anonymous, unsubstantiated  
 3 allegations made to law enforcement because of overriding privacy concerns of the subject' of  
 4 the allegations. "[When disclosure of public investigatory records is resisted due to privacy,  
 5 the involved agency and the courts have a duty to interpret and apply RCW 42.17.31091)(d),  
 6 and pursuant to that duty, they must consider all relevant factors bearing on whether the  
 7 information in the records is of legitimate public concern." City of Tacoma v. Tacoma News  
 8 Inc., 65 Wn.App. 140, 15 1, 827 P.2d 1094, rev. denied 1 19 Wn.2d 1020, 838 P.2d 692  
 9 (1992).  
 10  
 11

12 6. Improper Pretrial Publicity Jeopardizes A Fair trial By An Impartial Jury

13 Pretrial publicity jeopardizes a defendant's right to trial by a fair and impartial jury. A  
 14 significant amount of the coverage in the case has been inflammatory and geared towards  
 15 arousing sympathy, prejudice and passion. Statements of various individuals has not been  
 16 limited to Maurice Clemmons and his actions but has included his family members and  
 17 friends and has speculated as to the reasons behind the homicides and whether Mr. Allen was  
 18 involved as an accomplice to these murders.. It has also extensively covered the anguish and  
 19 heartbreak of the victims' families, the memorial service was held at the Tacoma Dome and  
 20 covered by four television stations and the video of the proceedings is for sale to the public.  
 21

22 This is not proper pretrial publicity. It is for the jury to decide the facts based on all  
 23 evidence admitted at trial, not on prejudice, sympathy or inadmissible evidence. It is not for  
 24 the State or potential jurors prior to trial to make these decisions without all the evidence. If  
 25 the news media entity is permitted to obtain and presumably publish the information  
 26



1 contained in the investigative files, Mr. Allen will be further deprived of his right to a fair  
2 trial. Significantly, the request for information precedes the dissemination to Mr. Allen of a  
3 single police report associated with his case.  
4

5 The United States Supreme Court has recognized that to safeguard the due process  
6 rights of an accused, a trial judge has an affirmative constitutional duty to minimize the  
7 effects of prejudicial pretrial publicity, and he may take protective measures even when they  
8 are not strictly and inescapably necessary. Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 99  
9 S. Ct. 2898, 61 L.ed.2d 608 (1979). The DePasquale Court directs a trial court to be "over  
10 cautious" in ensuring that the defendant receive a fair trial. 99 S.Ct at 2905, n. 6. Like the  
11 situation presented in DePasquale, in which the court found that publicity surrounding  
12 pretrial suppression hearings pose special risks of unfairness because it may influence public  
13 opinion against a defendant and inform potential jurors of inculpatory information that would  
14 not be admissible at trial. Moreover, the DePasquale court found that the Sixth  
15 Amendment's guarantee of a public trial is for the benefit of the defendant alone. The court  
16 further stated that even if the First and Fourteenth Amendments provided some right to the  
17 press and public to attend criminal trials, the defendant's right to a fair trial outweighed the  
18 "constitutional rights of the press and public." Here, the situation is even further removed  
19 from the public's right to be present at a public trial because the investigative materials  
20 support an on going search for additional information associated with alleged and uncharged  
21 criminal activity.  
22  
23  
24

25 In a Washington State case also involving a pretrial suppression hearing, the  
26 Washington Supreme Court determined that closing a pretrial suppression hearing and

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temporarily sealing the court file was appropriate, especially in light of the conduct of the newspaper which demonstrated it would not abide by the bench-bar-press guidelines. Federated Publications, Inc. v. Kurtz, 94 Wn.2d 51, 615 P.2d 440 (1980). The decision acknowledges that the press is entitled to publish information gathered in *open* judicial proceedings under Wash. Const. Art.1, Section 10, however, the State and Federal Constitutions also require the trial judge to implement protective measures against the reasonable possibility of prejudicial publicity. Kurtz, 94 Wn.2d at 59-61. In Kurtz, the court found that Art.1, Section 22 "must at a minimum provide that an accused have an impartial jury free from outside influences and that the balance is never weighed against the accused, the public's right of access under section 10 must be interpreted in light of these requirements. Kurtz at 61, citations omitted. Our situation is even more compelling, in that here the defendant has not impeded the press's access to open public hearings, but rather seeks to ensure his right to a fair trial by an impartial jury.

Bench Press Bar Guidelines address these very concerns and provide:

2. The release of certain types of information by law enforcement personnel, the bench and the bar and publication thereof by news media generally tends to create dangers of prejudice without serving a significant law enforcement or public interest function. Therefore, all concerned should be aware of the dangers of prejudice in making pretrial public disclosures of the following:
  - (a) Opinion about a defendant's character, guilt or innocence.
  - (b) Admissions, confessions or the contents of statements or alibis attributable to a defendant

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- 1 (c) Opinions about the results of investigative procedures,  
2 such as fingerprints, polygraphs examinations, ballistic  
3 tests or laboratory tests.  
4 (d) Statements concerning the credibility or anticipated  
5 testimony of prospective witnesses.  
6 (e) Opinions concerning evidence or argument in the case,  
7 whether or not anticipated that such evidence or  
8 argument will be used at trial.

9 All of these types of prejudicial information and more are contained within the  
10 documents requested by the unidentified requestor.

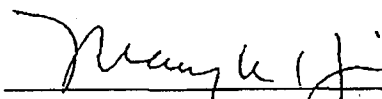
### 11 CONCLUSION

12 Mr. Allen joins in defendant Hinton's and Mr. Davis's motion and also requests the  
13 court deny the request for all investigative materials generated in the Clemmons' criminal  
14 investigation. Mr. Allen urges the court to find the materials to be exempt from disclosure  
15 because the publicity that would flow from the publication of the materials would irreparably  
16 impair his ability to receive a fair trial by a fair and impartial jury.

17 Respectfully Submitted this 12<sup>th</sup> day of March, 2010.

18 DEPARTMENT OF ASSIGNED COUNSEL

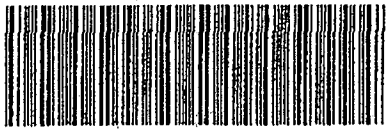
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21 By

  
Mary Kay High, WSBA No. 20123

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09-1-05523-0 33932945 MT 03-15-10

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BY KEVIN STOCK, COUNTY CLERK  
DEPUTY

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON )

Plaintiff, )

No. 09-1-05523-0 )

vs. )

MOTION TO JOIN IN FILED MOTIONS )

LATANYA KAYE CLEMMONS )

Defendant )

COMES NOW the defendant LATANYA KAYE CLEMMONS, by and through the undersigned attorney of record, G. HELEN WHITENER join in the stated motions filed on behalf of defendant RICKEY HINTON by his counsel of Record PHILLIP THORNTON under Cause No. 09-1-05430-6 to include the following:

1. Motion for Order Restraining the Pierce County Sheriff From Releasing Materials
2. Declaration of Counsel in support of the Motion for Order Restraining the Pierce County Sheriff From Releasing Materials
3. Memorandum in Support of Motion for Order Restraining the Pierce County Sheriff From Releasing Materials

DATED this 12<sup>th</sup> day of March, 2010.

G. Helen Whitener, WSBA# 28968  
Attorney for Defendant.

MOTION TO JOIN IN FILED MOTIONS

WHITENER RAINEY  
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# **EXHIBIT F**

**(Seattle Times Co. v. Sarko)**

SUPERIOR COURT OF THE STATE OF WASHINGTON  
PIERCE COUNTY

STATE OF WASHINGTON,  
Plaintiff,

v.

EDDIE LEE DAVIS,  
DOUGLAS EDWARD DAVIS,  
RICKEY HINTON,  
QUIANA M. WILLIAMS,  
LATRECIA NELSON,  
LATANYA K. CLEMMONS,  
DARCUS ALLEN.

Defendants

) No. 09-1-05374-1  
) No. 09-1-05375-0  
) No. 09-1-05340-6  
) No. 09-1-05452-7  
) No. 09-1-05453-5  
) No. 09-1-05523-0  
) No. 10-1-00938-0

) OPPOSITION OF PUBLIC  
) RECORDS ACT REQUESTER  
) SEATTLE TIMES COMPANY TO  
) DEFENDANTS' MOTIONS TO  
) ENJOIN RELEASE OF PUBLIC  
) RECORDS

I. INTRODUCTION AND RELIEF REQUESTED

The Seattle Times Company ("Times") respectfully asks the court to deny the motions filed by the Defendants in the captioned matter (collectively, "Defendants"), all of whom seek to bar the Pierce County Sheriff's Office ("PCSO") from responding to the Times' Public Records Act ("PRA") request for police reports and other records relating to the Maurice Clemmons investigation.<sup>1</sup> The Times asks to be heard on this matter at the March 31 hearing.<sup>2</sup>

<sup>1</sup> The Times is aware of motions and memoranda from Defendants Allen, Clemmons, Eddie Lee Davis, and Hinton. It is unaware whether the remaining Defendants have joined these motions.

<sup>2</sup> Since the motion concerns a Public Records Act request by the Times, it clearly would have a right to intervene: it is a real party in interest that will be affected by the outcome of the motion. See CR 24. If the Court so requires, The Times will bring a formal motion to intervene and to shorten time.

1 The PCSO has indicated that it is prepared to release responsive records pursuant to the  
2 PRA. Defendants claim that the records are exempt from disclosure under the PRA, and that the  
3 release poses a threat to their rights to a fair trial. Neither objection has merit.

4 First, Defendants lack standing under the PRA to object to the release of any record that  
5 does not specifically name or pertain to them. RCW 42.56.540. All records held by the PCSO  
6 that do not meet these criteria should be released immediately.

7 Second, no PRA exemption applies to these records. The Times' PRA request seeks  
8 police incident reports and other factual information gathered by law enforcement in the ordinary  
9 course of investigating alleged crimes. Defendants argue that the records are categorically  
10 exempt under the PRA's investigative records exemption (RCW 42.56.240(1)) and as work  
11 product. But police investigative reports are presumptively subject to disclosure under the PRA  
12 where, as here, they relate to incidents in which a defendant has already been identified. *Cowles*  
13 *Pub. Co. v. Spokane Police Dept.*, 139 Wn.2d 472, 987 P.2d 620 (1999). Under *Cowles*, which  
14 is directly on point, the presumption that investigative records are disclosable can be overcome  
15 only if the Court determines that specific information in the records is "essential" to "effective  
16 law enforcement." Moreover, in cases where a defendant has been charged, the exemption  
17 cannot be categorical. Only those portions of the records that are in fact essential to effective  
18 law enforcement may be redacted; the rest must be released. *Cowles* also establishes that under  
19 Washington law, police investigative reports are not the attorney work product of the prosecutor.  
20 *Id.* at 478.

21 In this case, there is no basis for the Court to find that continued secrecy is "essential to  
22 effective law enforcement." The law enforcement agency charged with the investigation, the  
23 PCSO, has raised no concern. The Defendants identify no law enforcement concern at all. Nor  
24 does the privacy prong of the investigative records exemption apply. Under the PRA, any  
25 privacy interest is defeated if there is a "legitimate public interest" in the disclosure. Here, the  
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1 public has an obvious, legitimate interest in issues relating to the investigation of Defendant's  
2 alleged acts.

3 Third, Defendants also raise a general concern that release of the records might affect  
4 pretrial publicity. Their arguments fall far short of the standard required to show prejudice to a  
5 party's right to a fair trial, and they have provided no factual basis to suggest that release of the  
6 records will jeopardize this Court's ability to seat an impartial jury.

7 Accordingly, the Court should deny the motions, and should order the PCSO to release  
8 the responsive records. To the extent the Court is inclined to enjoin release of any of the records,  
9 it must review the potentially exempt record *in camera* to determine whether, and to what extent,  
10 any exemption applies.

## 11 II. FACTS

12 This matter concerns three PRA requests submitted by Seattle Times news reporter Steve  
13 Miletich on behalf of the Times. His initial, verbal request to PCSO was for incident reports  
14 relating to the events inside the Forza coffee shop on November 29, 2009. On December 17,  
15 2009, he submitted a written request to PCSO for reports regarding events occurring outside the  
16 coffee shop subsequent to the shootings. On January 4, 2010, he requested records held by  
17 PCSO related to Bureau of Alcohol, Tobacco and Firearms "gun trace" information in  
18 connection with the shootings of the Lakewood officers and Pierce County Sheriff's Deputy Kent  
19 Mundell.

20 Prior to the filing of Defendants' motions, PCSO had indicated to the Times that it was  
21 prepared to release responsive records, subject to minor redactions of matters such as individual  
22 social security numbers (to which the Times does not object). At no time has PCSO indicated  
23 that it considers any of the records exempt. To date, the Times has received no records  
24 responsive to its requests.<sup>3</sup>

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26  
27 <sup>3</sup> PCSO provided the Times with ATF trace information with respect to the Deputy Mundell  
incident, but not with respect to the Lakewood incident.



### III. ARGUMENT AND AUTHORITIES

The four defense motions substantially overlap, and rely on identical arguments. For ease of reference, the Times will refer herein primarily to the memorandum submitted by Defendant Darcus Allen, which is the most expansive and includes all of the arguments contained in the other briefs.

#### A. The Records Sought By The Times Must Be Disclosed Under The PRA

##### 1. The PRA Is Construed Broadly in Favor of Disclosure, And A Party Opposing Disclosure Must Prove A Specific PRA Exemption Applies

The Public Records Act was passed by voter initiative in 1972, with the stated goal of assuring the sovereignty of the people over the agencies that serve them: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." RCW 42.56.030. To implement this sweeping purpose, the PRA is a strongly worded mandate for broad disclosure of public records, requiring every state agency to disclose *all* public records unless a specific statutory exemption allows withholding it. RCW 42.56.070(1); RCW 42.56.210(3); *Spokane Police Guild v. Wash. State Liquor Control Bd.*, 112 Wn.2d 30, 36, 769 P.2d 283 (1989). Challenges to public records requests are evaluated under the following principles.

First, courts must construe the right of disclosure broadly and the exemptions narrowly. RCW 42.56.030; *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wn.2d 243, 251, 260, 884 P.2d 592 (1994) ("*PAWS*"). Most exemptions are permissive, not mandatory. An agency has the option of disclosing exempt records even if an exemption applies. *See* AGO 1980 No. 1; RCW 42.56.210(3) (agency may withhold records only when there is a specific exemption so "authorizing").

Second, where a third party or an agency seeks to enjoin disclosure of a public record under RCW 42.56.540, that party bears the burden of proving that a specific exemption applies. *PAWS*, 125 Wn.2d at 257-58.<sup>4</sup> The exemption must be based on the PRA's statutory language,

<sup>4</sup> All of the Defendants base their motions on RCW 42.56.540.

1 and not on concerns about the potential effect public disclosure may have. Under the PRA, “free  
2 and open examination of public records is in the public interest, even though such examination  
3 may cause inconvenience or embarrassment to public officials or others.” RCW 42.56.550(3);  
4 *see PAWS*, 125 Wn.2d at 251; *King County v. Sheehan*, 114 Wn. App. 325, 57 P.3d 307 (2002).

5 Third, the bar for objection to a PRA request under RCW 42.56.540 is much higher than  
6 simply proving an exemption. While an applicable statutory exemption is necessary to obtain a  
7 PRA injunction, it is not in itself sufficient. The third party must also establish the additional  
8 requirements set out in RCW 42.56.540 – namely, that release of the record in question would  
9 “clearly not be in the public interest and would substantially and irreparably damage any person,  
10 or would substantially and irreparably damage vital governmental functions.” RCW 42.56.540.  
11 *See Soter v. Cowles Publ’g Co.*, 162 Wn.2d 716, 756-57, 174 P.3d 60 (2007).

12 Finally, when records are withheld from disclosure, the applicable exemption must be  
13 identified “with particularity” and with reference to each specific withheld record. *PAWS*, 125  
14 Wn.2d at 271; RCW 42.56.210(3). Where only parts of a record are exempt, only the exempt  
15 portions information should be redacted and the remainder should be released. *See* RCW  
16 42.56.070(1), .210

## 17 2. Defendants Lack Standing to Seek a PRA Injunction

18 The statutory authority for enjoining release of a public record is RCW 42.56.540, as all  
19 of the Defendants’ motions acknowledge. That statute has a specific standing requirement: In  
20 the case of individuals, a motion to enjoin disclosure may be brought only by “a person who *is*  
21 *named in the record* or to whom the record *specifically pertains*.” *Id.* (emphasis added). This  
22 provision furthers the PRA’s policy of open access to government records, by limiting the  
23 universe of third parties who can seek this extraordinary relief.

24 In this case, Defendants do not argue that all of the records requested by the Times  
25 identify or specifically pertain to any Defendant. Based on the volume of documents and the  
26 nature of the Times’ request, there is no basis to assume that *any* of the records specifically  
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1 identify the Defendants. Accordingly, PCSO should immediately release any record that does  
2 not name and/or specifically pertain to any of the moving Defendants.

### 3           3.       The Investigative Records Exemption Does Not Apply

4           Defendants, but not PCSO, argue that the Times should categorically be denied access to  
5 the requested public record based on the PRA's investigative records exemption. That provision  
6 exempts "specific investigative records" from disclosure, where nondisclosure "is essential to  
7 effective law enforcement or for the protection of any person's right to privacy." RCW  
8 42.56.240(1). Neither the law enforcement nor the privacy prongs of the exemption applies here.

9           Courts narrowly construe the term "essential to effective law enforcement" in favor of  
10 disclosure. *Prison Legal News, Inc. v. Dept. of Corrections*, 154 Wn.2d 628, 640, 115 P.3d 316  
11 (2005). Where a defendant has been identified and charged (as is the case here), investigative  
12 records are presumptively not "essential to effective law enforcement," and, absent a specific  
13 showing to the contrary, must be disclosed. *Cowles*, 139 Wn.2d at 481.

14           Defendants argue that the records at issue in this case are categorically exempt from  
15 disclosure under *Newman v. King County*, 133 Wn.2d 565 (1997). *See, e.g.*, Allen Mem. at 9.  
16 But *Newman* is simply inapplicable to cases, like this one, in which a defendant has been arrested  
17 and charged. *Newman* involved an unsolved, 25-year-old killing in which no defendant had been  
18 identified, much less charged. The question of whether withholding records about the  
19 investigation was "essential to effective law enforcement" turned on whether any investigation  
20 into the cold-case homicide still existed. The Supreme Court held that it did, based on evidence  
21 that investigators were still pursuing leads and that the case was "leading toward an enforcement  
22 proceeding." *Id.* at 573.

23           The Supreme Court cabined *Newman* to its facts in *Cowles*, which articulates a different  
24 standard for evaluating the PRA's investigative records exemption *after* "the suspect is arrested  
25 and the case referred to the prosecutor." *Cowles*, 139 Wn.2d at 481. In that situation, "police  
26 incident reports *are presumptively disclosable* upon request[.]" *Id.* (emphasis added). That  
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1 presumption applies in this case because Defendants have already been arrested, referred, and  
2 charged. Therefore, *Cowles*, not *Newman*, is the applicable standard in this case.

3 Defendants argue that *Newman*, not *Cowles*, should apply here because *Cowles* was a  
4 drunk driving case and because the investigation here is allegedly ongoing. Notably, no  
5 prosecutor and no agency investigating these matters has asserted that the investigation is  
6 “ongoing” or – more to the point – that disclosure of the incident reports at issue would impede  
7 law enforcement. Moreover, *Cowles* makes plain that the presumption that police records are  
8 disclosable does not depend on the severity of the crime, or the alleged state of the investigation.  
9 *Cowles* could not be clearer on this point: “In sum, we hold *in cases where the suspect has been*  
10 *arrested* and the matter referred to the prosecutor, *any potential danger to effective law*  
11 *enforcement is not such as to warrant categorical nondisclosure of all records in the police*  
12 *investigative file.*” *Cowles*, 139 Wn.2d at 479-80 (emphasis added). Rather, the presumption of  
13 openness applies *whenever* the defendant has been identified and charged:

14 [I]n *Newman*, we were concerned both with the difficulty police would have  
15 segregating information in *unsolved cases*, and with the propriety of charging  
16 courts with responsibility of determining whether nondisclosure was critical to  
17 solving the case – a task which we felt was better left to the professional  
18 judgment of the police. *These same concerns are not present in a case, as*  
19 *here, where the suspect has already been arrested and the matter referred to*  
20 *the prosecutor* for a charging decision. In such circumstances, the risk of  
21 inadvertently disclosing sensitive information that might impede apprehension  
22 of the perpetrator no longer exists.

23 *Id.* at 477-78 (emphasis added).

24 Defendants fare no better under the privacy prong of the PRA’s investigative records  
25 exemption. For any privacy exemption under the PRA to apply, the proponent must establish  
26 that the disclosure “[w]ould be highly offensive to a reasonable person, and (2) is not of  
27 legitimate concern to the public.” RCW 42.56.050. “[B]oth a privacy interest *and* a lack of  
legitimate public interest must be present[.]” *King County v. Sheehan*, 114 Wn. App. 325, 344,  
57 P.3d 307 (2002) (emphasis in original). This is not a balancing test; rather, a public interest in

1 disclosure is sufficient in itself to overcome any asserted individual privacy interest. *Koenig v.*  
2 *Des Moines*, 158 Wn.2d 173, 185, 142 P.3d 162 (2006). In this case, Defendants fail to identify  
3 any individual with a privacy interest, and fail to say what disclosures would be “highly  
4 offensive to a reasonable person.” Moreover, the public has a heightened and obvious interest in  
5 criminal investigations generally and this case in particular. Accordingly, the PRA’s  
6 investigative records exemption does not apply.

7 **4. The Work Product Exemption Does Not Apply Because Police**  
8 **Investigative Files Are Not Work Product**

9 The Defendants also argue that the records are exempt as the *state’s* attorney work  
10 product. See Allen Mem. at 10. This is a strange argument for the *Defendants* to make;  
11 presumably, if the records request sought the prosecutor’s work product, the prosecutor would be  
12 objecting. But the records are not attorney work product. The Times’ record request is not  
13 directed to the prosecutor or any other attorney for the state. Instead, the request seeks police  
14 reports and investigative records gathered by a police agency in the ordinary course of  
15 investigating the crimes at issue. The Defendants’ attempt to characterize these police files as  
16 attorney work product is contrary to *Cowles*, which holds that “[g]enerally, nothing in a police  
17 investigative file would be considered attorney work product.” *Cowles*, 139 Wn.2d at 478.  
18 Defendants rely on *Limstrom v. Ladenburg*, 136 Wn.2d 595, 963 P.2d 869 (1998), but that case  
19 involved PRA requests “to the Pierce County Prosecuting Attorney asking to inspect the  
20 prosecutor’s litigation files.” *Id.*, 136 Wn.2d at 601. As the Times’ request is not directed to  
21 attorneys for any agency, it cannot conceivably be work product.

22 **B. Defendants Have Failed To Establish That Releasing The Records Will**  
23 **Endanger Their Right To A Fair Trial.**

24 Defendants’ assertions that their right to a fair trial might be endangered if the PCSO  
25 complies with its PRA obligations are unsupported and amount to mere speculation. They offer  
26 no basis for questioning the Court’s ability to impanel an impartial jury, and as such the  
27 arguments fall far short of the standard required to show prejudicial pretrial publicity.

1 The Supreme Court has made clear that releasing public records about a pending criminal  
2 matter generally does not impinge on the defendant's fair trial rights: "Nor does a defendant's  
3 constitutional right to a fair trial compel categorical nondisclosure of police investigative  
4 records. Facts regarding pending criminal prosecutions are often made public prior to trial. This  
5 rarely results in the inability to impanel a fair and impartial jury." *Cowles*, 139 Wn.2d at 479.

6 "Pretrial publicity need not impair the defendant's right to a fair trial," even where a  
7 defendant stands accused of violent well-publicized crimes in a small community. *State v.*  
8 *Bassett*, 128 Wn.2d 612, 616-17, 911 P.2d 385 (1996); *see also* 12 Wash. Prac., Criminal  
9 Practice & Procedure § 1814 (3d ed.) ("The mere presence of widespread adverse pretrial  
10 publicity concerning the defendant does not establish a reasonable probability that he cannot  
11 obtain a fair trial so as to entitle him to a continuance."); *Seattle Times Co. v. U.S. District Court*,  
12 845 F.2d 1513, 1517-18 (9th Cir. 1988) ("Pretrial publicity does not...lead in every criminal case  
13 to an unfair trial," and "prejudicial publicity is less likely to endanger the defendant's right to a  
14 fair trial in a large metropolitan area such as Seattle"); *United States v. Baker*, 5 Media L. Rptr.  
15 1417, 1418 (W.D. Wash. 1979) (rejecting defendant's request to close a suppression hearing on  
16 the ground that news reports about the case would prejudice prospective jurors based on the  
17 court's finding that "a jury panel can be drawn that will abide by the instructions of the Court.").

18 A generalized fear of publicity is not a sufficient ground for limiting public access. "The  
19 relevant question is ... whether the jurors at the trial had such fixed opinions that they could not  
20 judge impartially the guilt of the defendant. ... The best way to find out if the jurors have  
21 opinions so fixed that they cannot be impartial is to attempt to empanel a jury." *State v.*  
22 *Whitaker*, 133 Wash. App. 199, 212, 135 P.3d 923 (2006) (citing *State v. Jackson*, 150 Wn.2d  
23 251, 269, 76 P.3d 217 (2003). Alternatives such as careful voir dire and jury instructions  
24 regarding news reporting and the presumption of innocence must, as a matter of law, be  
25 considered before any restriction on public access is entertained. *See Bassett*, 128 Wn.2d at 617;  
26 *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 41, 640 P.2d 716 (1982).

1 Defendants have not even attempted to show that pretrial publicity justifies any  
2 restrictions on the public's right of access to the police and other public records at issue. They  
3 cite no news coverage of this case, much less any that amounts to prejudicial publicity. They  
4 have not addressed the alternatives to restricting access. Most important, they do not, and  
5 cannot, show that the Court – through proper voir dire and the other alternatives noted above –  
6 would be unable to seat an impartial panel from the Pierce County jury pool.

7 Defendants argue that compliance by the *Sheriff's Office* with its PRA obligations would  
8 somehow amount to an "extrajudicial statement," in violation of the Rules of Professional  
9 Conduct, by the Pierce County Prosecuting Attorney. See Allen Mem. at 7. Defendants cite no  
10 authority for this contention, which stretches the meaning of the word "statement" beyond  
11 recognition. The Times is not soliciting any statement, extrajudicial or otherwise, from the  
12 prosecutor. It is seeking public records, generated by another agency.

13 Finally, Defendants rely on *Federated Publications, Inc. v. Kurtz*, 94 Wn.2d 51, 615 P.2d  
14 440 (1980), a case that has no application in the PRA context, and that is outdated in any event.  
15 In *Kurtz*, the Supreme Court affirmed a trial court's closure of a pretrial hearing based in part on  
16 concerns that news media covering the case was not complying with the Bench-Bar-Press  
17 Guidelines of 1974. The case would not be decided the same way today: it predates *Seattle*  
18 *Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982), in which the Washington Supreme  
19 Court adopted a heightened standard that must be satisfied, as a matter of constitutional law,  
20 whenever limitations on public access to court operations are sought.<sup>5</sup> The approval of the  
21 closure at issue in *Kurtz* must be regarded as dubious, at best, in light of three decades of state  
22 Supreme Court authority emphasizing the extreme importance of unfettered public access to  
23 court proceedings and court records.<sup>6</sup>

24 <sup>5</sup> Under *Ishikawa*, the proponent of the restriction bears the burden of showing that the limitation  
25 is necessary, that it is the "least restrictive means available," that it will be effective in protecting  
26 the interests threatened, and that alternative methods would be inadequate. 97 Wn.2d at 37-39.  
The court also must articulate a specific basis for its ruling. *Id.*

27 <sup>6</sup> See, e.g. *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995)); *Allied Daily Newspapers v.*  
*Eikenberry*, 121 Wn.2d 205, 848 P.2d 1258 (1993); *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 114

1 Nor do the Bench-Bar-Press Principles provide a basis for withholding the records at  
2 issue in this case. The Times is familiar with and fully supports the current version of these  
3 guidelines. But Defendants ignore the fact that the 1974 Guidelines were rewritten in the wake  
4 of *Kurtz* and the contemporaneous decision of *Federated Publications Inc. v. Swedberg*, 96  
5 Wn.2d 13, 633 P.2d 74 (1981)), for the express purpose of assuring that no court would ever  
6 construe the guidelines as mandatory. See "A Note on Bench-Bar Press Principles," *Public*  
7 *Records Act Deskbook* § 20.5 (WSBA 2006) (stating that "the Bench-Bar-Press Guidelines were  
8 cooperatively rewritten as Principles and Considerations, with express agreement that courts  
9 were not to use them as mandatory directives"). The Bench-Bar-Press Principles themselves  
10 now state that "any effort to make the principles or considerations mandatory on the news media  
11 would destroy the bench-bar-press program and seriously jeopardize the continuation of any  
12 collegial fair-trial/free-press efforts in Washington." See  
13 <http://www.wsba.org/media/benchbar/default.htm#introduction>. The principles "are not binding,  
14 but provide practical guidance on the relationships between judges, lawyers and the press, and  
15 are intended to promote a better working relationship between the bench, bar and news media."  
16 Washington Courts Bench Bar Press Committee,  
17 [http://www.courts.wa.gov/committee/?fa=committee.home&committee\\_id=77](http://www.courts.wa.gov/committee/?fa=committee.home&committee_id=77).

18 In any case, Defendants have not established that anything in the records sought by the  
19 Times would be contrary to the Bench-Bar-Press Principles. More significantly, they have failed  
20 to meet their burden of establishing that allowing the PCSO to fulfill its PRA obligations would  
21 make it impossible to seat a fair jury in this case. Nor have they established that any PRA  
22 exemption applies.

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27 P.3d 1182 (2005).



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DATED this 29th day of March, 2010.

By /s/ Sarah K. Duran  
Eric M. Stahl, WSBA #27619  
Sarah K. Duran, WSBA #38954

### CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2010, I caused true and correct copies of the foregoing document to be served on the following counsel of record in the manner indicated.

Mary Kay High, WSBA #20123 Department of Assignment Counsel 949 Market Street, Suite 334 Tacoma, WA 98402	<input type="checkbox"/> via messenger <input checked="" type="checkbox"/> via first class mail <input type="checkbox"/> via overnight mail <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via electronic mail
John P. O'Melveny, WSBA #9569 The Law Office of John P. O'Melveny 15 North Broadway, Suite A Tacoma, WA 98402	<input type="checkbox"/> via messenger <input checked="" type="checkbox"/> via first class mail <input type="checkbox"/> via overnight mail <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via electronic mail
G. Helen Whitener, WSBA #28968 Whitener Rainey 820 Sixth Avenue, Suite A Tacoma, WA 98405	<input type="checkbox"/> via messenger <input checked="" type="checkbox"/> via first class mail <input type="checkbox"/> via overnight mail <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via electronic mail
Philip E. Thornton, WSBA 20077 The Law Office of Philip E. Thornton 901 South "T" Street, Suite 201 Tacoma, WA 98405	<input type="checkbox"/> via messenger <input checked="" type="checkbox"/> via first class mail <input type="checkbox"/> via overnight mail <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via electronic mail
Keith MacFie, WSBA # Attorney at Law 711 Commerce Street, Suite 210 Tacoma, WA 98402-4514	<input type="checkbox"/> via messenger <input checked="" type="checkbox"/> via first class mail <input type="checkbox"/> via overnight mail <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via electronic mail
Chip Mosely Attorney at Law 16000 Christensen Road, Suite 308 Tukwila, WA 98188-2928	<input type="checkbox"/> via messenger <input checked="" type="checkbox"/> via first class mail <input type="checkbox"/> via overnight mail <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via electronic mail
Kent Underwood Attorney at Law 1111 Fawcett Avenue, Suite 101 Tacoma, WA 98402-3120	<input type="checkbox"/> via messenger <input checked="" type="checkbox"/> via first class mail <input type="checkbox"/> via overnight mail <input type="checkbox"/> via facsimile <input checked="" type="checkbox"/> via electronic mail

1 Declared under penalty of perjury under the laws of the state of Washington dated at  
2 Seattle Washington this 29th day of March, 2010.

3  
4 Davis Wright Tremaine LLP  
5 Attorneys for The Seattle Times Company  
6

7 By /s/ Sarah K. Duran  
8 Eric M. Stahl, WSBA #27619  
9 Sarah K. Duran, WSBA #38954  
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# **EXHIBIT G**

**(Seattle Times Co. v. Sarko)**

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6 **SUPERIOR COURT OF WASHINGTON**  
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8 **FOR PIERCE COUNTY**  
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10 **STATE OF WASHINGTON,**

11 **Plaintiff,**

12 **v.**

13 **EDIE LEE DAVIS,**

14 **DOUGLAS EDWARD DAVIS,**

15 **RICKEY HINTON,**

16 **QUIANA M. WILLIAMS,**

17 **LATRECIA NELSON,**

18 **LATANYA K. CLEMMONS,**

19 **DARCUS ALLEN,**

20 **Defendants.**  
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) **NO. 10-1-00938-0**

)  
) **ORDER ON MOTION TO**  
) **RECONSIDER AND FOR**  
) **IN CAMERA REVIEW FOR**  
) **DOCUMENTS UNDER PUBLIC**  
) **RECORDS ACT**

22 **THE COURT**, upon Motion of Mary K. High, legal counsel for Defendant, Darcus Allen, to  
23 intervene and upon Motion for Reconsideration of an Order entered on 31 March 2010, having considered  
24 the files and records in this cause and having determined that the party has standing pursuant to CR 24(a)(2)  
25 or CR 24(b)(2) related to Public Disclosure of records under Chapter 42.56 RCW, and having considered  
26

27  
28 **Order on Motion to Reconsider and For**  
**In Camera Review For Documents**  
**Under Public Records Act - 1**

 ORIGINAL

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1 argument, and having determined that limited intervention serves the interest of justice and judicial  
2 efficiency and economy, and being otherwise fully advised in this cause, NOW THEREFORE

3 ORDER, ADJUDGES AND DECREES that


- 4 1) The Motion to Intervene for a limited purpose by Defendant, Darcus Allen, IS and the SAME  
5 SHALL BE GRANTED;  
6  
7 2) The Motion for Reconsideration of the Order of Stay and Disclosure entered on 31 March 2010  
8 IS and the SAME SHALL BE GRANTED;  
9  
10 3) The Deputy Prosecuting Attorney, Craig Adams, representing the Office of the Sheriff for  
11 Pierce County, SHALL prepare a listing of the documents that are available to be disclosed  
12 pursuant to requests from Wm. Michael Hanbey, The Seattle Times, Thomas Miller, Rhonda  
13 Cully, and SHALL provide the listing to all counsel of record in this proceeding and to the  
14 Court; Provided Further, said Deputy Prosecuting Attorney shall provide copies of all  
15 documents identified in the listing to a Judicial Officer identified by the Court;  
16  
17 4) A sitting Judicial Officer of Pierce County SHALL conduct an *in camera* review of the  
18 documents proposed to be disclosed as identified in the listing of documents provided by  
19 Deputy Prosecutor Craig Adams;  
20  
21 5) The sitting Judicial Officer SHALL determine if any of the listed documents are subject to  
22 exemption from disclosure under any exemption authorized by the Public Records Act, *ch. 42.56A*  
23 ~~including, but not limited to RCW 42.56.050, 210, 220, 240, the Bench-Bar Press Guidelines,~~  
24 ~~the Rules of Professional Conduct 3.6 and 3.8(f) and whether disclosure of those documents not~~  
25 ~~subject to such exemption shall impair the defendants right to fair trial;~~ *, taking into consideration such documents as the Bench-*  
26 *Bar-Press Guidelines and the Rules of Professional Conduct 3.6 and 3.8*  
27 6) The sitting Judicial Officer shall issue an Order of disclosure of those documents subjected to in  
28 camera review that are not subject to exemption or which would impair the defendant's right to  
fair trial;

Order on Motion to Reconsider and For  
In Camera Review For Documents  
Under Public Records Act - 2

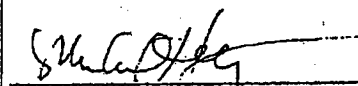
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7) Disclosure of any documents held by the Office of the Sheriff shall be stayed pending the in camera review and determination made by the sitting Judicial Officer.

DATED THIS 7 DAY OF MAY, 2010.

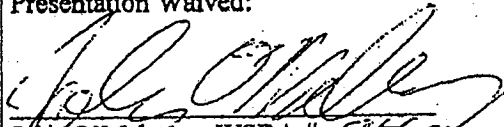
  
Stephanie A. Arend, Judge  
Department # 12

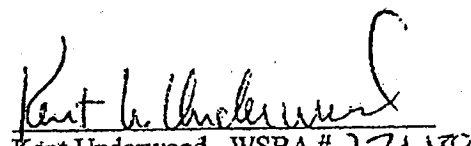
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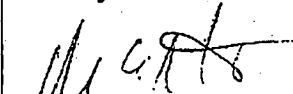
  
Michael Hanbey, WSBA #7829  
Attorney/ Intervener


Robert Christie/Thomas Miller, WSBA #  
Attorney/Intervener


Approved as to Form, Notice of  
Presentation Waived:


  
John O'Melveny, WSBA # 9567  
Attorney for Defendant Eddie Davis


  
Kent Underwood, WSBA # 27250  
Attorney for Defendant Douglas Davis

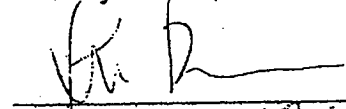
  
Philip Thornton, WSBA # 20277  
Attorney for Defendant Rickey Hinton

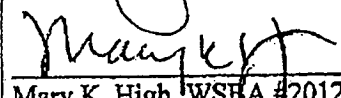
  
Kirk T. (Chip) Mosley, WSBA # 27603  
Attorney for Defendant Quiana Williams

  
Keith MacFie, WSBA # 15777  
Attorney for Defendant Latrecia Nelson

  
Helen (Grace) Whitener, WSBA #  
Attorney for Defendant Latanya Clemmons

  
Craig Adams, WSBA # 7608  
Deputy Prosecuting Attorney

  
Sarah Duran, WSBA # 30854  
Attorney for Seattle Times

  
Mary K. High, WSBA #20123  
Attorney for Defendant Darcus Allen

Order on Motion to Reconsider and For  
In Camera Review For Documents  
Under Public Records Act - 3

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# **EXHIBIT H**

**(Seattle Times Co. v. Sarko)**



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SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

EDDIE LEE DAVIS  
DOUGLAS EDWARD DAVIS  
RICKEY HINTON  
QUIANA WILLIAMS  
LATRECIA NELSON  
LATANYAK. CLEMMONS  
DARCUS ALLEN,

Defendant.

NO. 09-1-05374-1

09-1-05375-0

09-1-05340-6

09-1-05452-7

09-1-05453-5

09-1-05523-0

10-1-00938-0

MEMORANDUM RE: OBJECTION TO  
PCSO DOCUMENTS IDENTIFIED FOR  
RELEASE

INTRODUCTION

The materials should not be released for the reasons stated in the briefs. First, the investigation is ongoing, second release of materials will impair the defendant's constitutional right to a fair trial by an impartial jury and run afoul of the considerations

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1 found in the Bench Press Bar Guidelines and RPC 3.6 and 3.8. The media coverage to date  
2 has been extensive and inflammatory. Significantly, neither the prosecuting attorney nor the  
3 Pierce County Sherriff will commit on the record to a finding that the investigation is  
4 complete, nor has the elected prosecuting attorney made the decision on whether to seek the  
5 death penalty for Mr. Allen. Moreover, the Public Records Act requests were also directed  
6 to the Pierce County Prosecuting Attorney's Office, and the office has not disclosed the  
7 documents, asserting the work product exemption. Instead the requestors now turn to law  
8 enforcement for the release of records the prosecuting attorney has declined to release.  
9

#### 10 **AUTHORITY**

##### 11 **1. Procedure.**

12 RCW 42.56.540 establishes the court procedures for the protection of public  
13 records. The mechanics of the court's review are further addressed in Cowles Publ'g Co. v.  
14 Spokane Police Department, 139 Wn. 2d 472, 478, 987 P.2d 620 (1999). Cowles holds that  
15 the court is "qualified to evaluate the potential affect of disclosure on the trial process . . .  
16 "See also Limstrom, 136 Wn.2d at 615 (in camera review is the only way a court can  
17 determine what portion of a document, if any, is exempt from disclosure.) 139 Wn.2d at 479-  
18 80; See also, State v. Jones, 96 Wn. App.369, 377, 979 P.2d 898 (1999)(in camera review of  
19 confidential materials per a claim of RCW 5.60.060(5)).  
20

##### 21 **2. Disclosure will irreparably impair Mr. Allen's ability to receive a fair** 22 **trial by a fair and impartial jury**

23 As has been observed many times, death, as a punishment is different. When a  
24 defendant's life is at stake, the courts have been particularly sensitive to insure that every  
25 safeguard is observed. Gregg v. Georgia, 428 U.S. 153, 187, 49 L. Ed. 2d 859, 96 S. Ct. 2909  
26

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1 (1976). State v. Frampton, 95 Wn.2d 469, 627 P.2d 922 (1981). Criminal statutes involving  
2 the death penalty must be construed in a manner which is particularly sensitive to the  
3 protections afforded the defendant.  
4

5 This is a potential capital prosecution of Darcus Allen and these proceedings could  
6 result in his death by lethal injection or hanging. The State, through the Prosecuting Attorney,  
7 has filed a notice that is considering a filing a Notice of Special Proceeding indicating it may  
8 seek to kill Darcus Allen for his alleged association with Maurice Clemmons. "The  
9 fundamental respect for humanity underlying the Eighth Amendment's prohibition against  
10 cruel and unusual punishment gives rise to a special need for reliability in the determination  
11 that death is the appropriate punishment in any capital case." Johnson v. Mississippi, 486  
12 U.S. 578, 584, 108 S.Ct. 198 1, 100 L.Ed.2d. 575 (1988) (quoting Gardner v. Florida, 430  
13 U.S. 349, 363-64, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977) (White, J., concurring) (quoting  
14 Woodson v. North Carolina, 428 U.S. 280, 305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976). It is  
15 now well established that when a defendant's life is at stake, a court must be "particularly  
16 sensitive to insure that every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187, 96  
17 S.Ct. 2909, 49 L.Ed.2d 859 (1976). As this Court is acutely aware, the penalty of death is  
18 qualitatively and profoundly different from any other sentence. *e.g.* Ford v. Wainwright, 477  
19 U.S. 399, 411, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) ("In capital proceedings generally, this  
20 Court has demanded that fact finding procedures aspire to a heightened standard of reliability.  
21 This especial concern is a natural consequence of the knowledge that execution is the most  
22 irremediable and unfathomable of penalties; that death is different." (citations omitted));  
23 California v. Ramos, 463 U.S. 992, 998-99, 103 S.Ct. 3446, 77 L.Ed.2d 1171 (1983)  
24  
25  
26

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1 (recognizing "the qualitative difference of death from all other punishments"); Eddings v.  
2 Oklahoma, 455 U.S. 104,110,102 S.Ct. 869, 71 L.Ed.2d 1 (1982) ("the imposition' of death  
3 by public authority is . . . profoundly different from all other penalties"). For this reason, our  
4 system of justice must go "to extraordinary measures to ensure that the prisoner  
5 sentenced to be executed is afforded process that will guarantee, as much as is humanly  
6 possible, that the sentence was not imposed out of whim, passion, prejudice, or  
7 mistake." Eddings v. Oklahoma, 455 U.S. at 118 (O'Connor, J. concurring) (emphasis  
8 added). These "extraordinary measures" must be taken at both stages of any capital trial. Beck  
9 v. Alabama, 447 U.S. 625,638, 100 S.Ct. 2382,65 L.Ed.2d 392 (1980).  
10  
11

12 Pretrial publicity jeopardizes a defendant's right to trial by a fair and impartial jury. A  
13 significant amount of the coverage in the case has been inflammatory and geared towards  
14 arousing sympathy, prejudice and passion. Statements of various individuals have not been  
15 limited to Maurice Clemmons and his actions but have included his family members and  
16 friends and has speculated as to the reasons behind the homicides and whether Mr. Allen was  
17 involved as an accomplice to these murders. It has also extensively covered the anguish and  
18 heartbreak of the victims' families, the memorial service attended by more than 20,000  
19 people including law enforcement from around the country and the world, was held at the  
20 Tacoma Dome and covered by four television stations and the video of the proceedings is for  
21 sale to the public. The legislature enacted numerous pieces of legislation including amending  
22 the State constitution as a result of Maurice Clemmons' actions. Media coverage and its  
23 corresponding blogs reveal public hatred and enmity against anyone even alleged to be  
24 connected to Maurice Clemmons. Likewise the media uses any opportunity to rehash the  
25  
26

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1 shooting of four officers by Maurice Clemmons, for example, stories regarding the trial of  
2 Mr. Martin Lewis invariably circled back to Maurice Clemmons and those charged with  
3 assisting him.  
4

5 This is not proper pretrial publicity. It is for the jury to decide the facts based on all  
6 evidence admitted at trial, not on prejudice, sympathy or inadmissible evidence. It is not for  
7 the State or potential jurors prior to trial to make these decisions without all the evidence or  
8 based on inadmissible evidence. If the news media is permitted to obtain and presumably  
9 publish the information contained in the investigative files, Mr. Allen will be further deprived  
10 of his right to a fair trial  
11

12 The United States Supreme Court has recognized that to safeguard the due process  
13 rights of an accused, a trial judge has an affirmative constitutional duty to minimize the  
14 effects of prejudicial pretrial publicity, and he may take protective measures even when they  
15 are not strictly and inescapably necessary. Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 99  
16 S. Ct. 2898, 61 L.ed.2d 608 (1979). The DePasquale Court directs a trial court to be "over  
17 cautious" in ensuring that the defendant receive a fair trial. 99 S.Ct at 2905, n. 6. Like the  
18 situation presented in DePasquale, in which the court found that publicity surrounding  
19 pretrial suppression hearings pose special risks of unfairness because it may influence public  
20 opinion against a defendant and inform potential jurors of inculpatory information that would  
21 not be admissible at trial. Moreover, the DePasquale court found that the Sixth  
22 Amendment's guarantee of a public trial is for the benefit of the defendant alone. The court  
23 further stated that even if the First and Fourteenth Amendments provided some right to the  
24 press and public to attend criminal trials, the defendant's right to a fair trial outweighed  
25  
26

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1 the "constitutional rights of the press and public." Here, the investigative materials  
2 support an ongoing search for additional information associated with alleged and uncharged  
3 criminal activity; including the seeking of the death penalty.

4  
5 In a Washington State case also involving a pretrial suppression hearing, the  
6 Washington Supreme Court determined that closing a pretrial suppression hearing and  
7 temporarily sealing the court file was appropriate, especially in light of the conduct of the  
8 newspaper which demonstrated it would not abide by the bench-bar-press guidelines.  
9 Federated Publications, Inc. v. Kurtz, 94 Wn.2d 51, 615 P.2d 440 (1980). The decision  
10 acknowledges that the press is entitled to publish information gathered in open judicial  
11 proceedings under Wash. Const. Art.1, Section 10, however, the State and Federal  
12 Constitutions also require the trial judge to implement protective measures against the  
13 reasonable possibility of prejudicial publicity. Kurtz, 94 Wn.2d at 59-61. In Kurtz, the court  
14 found that Art.1, Section 22 "must at a minimum provide that an accused have an impartial  
15 jury free from outside influences and that the balance is never weighed against the accused,  
16 the public's right of access under section 10 must be interpreted in light of these  
17 requirements. Kurtz at 61, citations omitted. Our situation is even more compelling, in that  
18 here the defendant has not impeded the press's access to open public hearings, but rather  
19 seeks to ensure his right to a fair trial by an impartial jury.

20  
21  
22 In this particular case the wholesale release of police investigative records would  
23 impair the trial process, violate the constitutional rights of the defendant, and hinder an  
24 ongoing investigation by law enforcement. It will also infringe on the privacy rights of  
25 individual who are identified in the investigative reports, and media attention on these  
26

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1 individuals will potentially influence these witnesses before they have a chance to testify at  
2 trial. Although the Supreme Court held in Cowles Publishing Company v. Spokane Police  
3 Department, 139 Wn.2d 472, 987 P.2d 620 (1999) that once an arrest has been made police  
4 investigative records are presumptively available to the public, it also clearly stated that  
5 presumption can be overcome in a specific case. Booking photos were excluded from  
6 release.  
7

8 Unlike the Supreme Court's 1999 Cowles decision, this is not a simple DUI case in  
9 which the records had already been released and the defendant had plead guilty. The charges  
10 here are aggravated murder, and the case has already generated intense publicity. To hand the  
11 police investigative file to media and undisclosed requestors would invite even more press  
12 coverage and raise significant fair trial concerns. Moreover, unlike in Cowles the Pierce  
13 County Sheriff's Department has not already made all the pertinent details public, according  
14 the Supreme Court:  
15

16 In any event, under the facts of this case, we are unpersuaded  
17 by the Department's argument. At the time the Department  
18 denied the disclosure requests at issue, it had already made all  
19 the pertinent details public. Thus, there was no further  
information left to protect.

20 139 Wn.2d at 479. The result in Cowles may well have been different had the Department not  
21 already released all the pertinent information. Here, the Pierce County Sheriff's Office has  
22 not released its investigative materials. Both for this reason, and because this is a highly  
23 complex capital case, the result reached in Cowles is not a proper one for this case.  
24  
25  
26

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1 Also the issue of pretrial release of law enforcement investigative materials is  
2 expressly restricted by the Rules of Professional Conduct. Defense Counsel, Sheriff's Office,  
3 and presumably, the Pierce County Prosecuting Attorney's Office, take these rules very  
4 seriously. The rules apply to defense counsel, prosecutors and law enforcement, and  
5 expressly regulate pretrial disclosures. Further, the Public Records Act itself recognizes  
6 exemptions not only under RCW 42.56 *et seq* but also under any "other statute which  
7 exempts or prohibits disclosure of specific information or records." RCW 42.56.070. The  
8 Rules of Professional Conduct are promulgated with the approval of the Supreme Court  
9 pursuant to the State Bar Act, RCW 2.48.060. The following rules, then, do have the force of  
10 statutory law and do create an exemption to the Public Records Act:  
11

### 12 **RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR**

13 The prosecutor in a criminal case shall:

14 (e) Exercise reasonable care to prevent investigators, law  
15 enforcement personnel, employees or other persons assisting or  
16 associated with the prosecutor in a criminal case from making  
17 an extrajudicial statement that the prosecutor would be  
18 prohibited from making under rule 3.6. (Emphasis added.)

19 Rule 3.6 and the Guidelines there under in turn provide as follows:

### 20 **RULE 3.6 TRIAL PUBLICITY**

21 A lawyer shall not make an extrajudicial statement that  
22 a reasonable person would expect to be disseminated by means  
23 of public communication if the lawyer knows or reasonably  
24 should know that it will have a substantial likelihood of  
25 materially prejudicing an adjudicative proceeding.

#### 26 **Guidelines for Applying RPC 3.6**

I. Criminal.

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1 A. The kind of statement referred to in rule 3.6 which  
2 may potentially prejudice criminal proceedings is a statement  
3 which relates to:

4 (1) The character, credibility, reputation or criminal  
5 record of a suspect or defendant;

6 (2) The possibility of a plea of guilty to the offense or  
7 the existence or contents of a confession, admission or  
8 statement given by a suspect or defendant or that person's  
9 refusal or failure to make a statement;

10 (3) The performance or results of any investigative  
11 examination or test such as a polygraph examination or a  
12 laboratory test or the failure of a person to submit to an  
13 examination or test;

14 (4) Any opinion as to the guilt or innocence of any  
15 suspect or defendant;

16 (5) The credibility or anticipated testimony of a  
17 prospective witness; and

18 (6) Information the lawyer knows or reasonably should  
19 know is likely to be inadmissible as evidence in a trial.  
20 (Emphasis added.)

21 \*\*\*

22 The Supreme Court did not address these rules and guidelines in Cowles, but at a  
23 minimum they would seem to be an appropriate consideration when determining whether the  
24 "protection of the trial process or the privacy rights of a suspect are essential in any given  
25 case," as required by Cowles, supra, 139 Wn.2d at 479.

26 The paramount right of the defendant in a capital case to due process and a fair trial  
under the Sixth and Fourteenth Amendments to the United States Constitution and article I,  
sections 3 and 22 of the Washington Constitution requires that such investigative materials  
not be released while the prosecution is pending. This is not a case about access to hearings  
and trial by the press and the public. The hearings have been open and the trial will be open.

### 27 3. The Records Are Exempt Under Newman

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1 As noted that, unlike Cowles Publishing Company v. Spokane Police Department,  
2 supra., this is not a DUI I case. The parameters of such a case are commonly known and well  
3 defined; the investigation involved in Cowles was complete when the matter was referred to  
4 the prosecutor. Here, the investigation involves a nationally reported multiple law  
5 enforcement homicide and is ongoing. This is a huge distinction. This case is less like  
6 Cowles and more like Newman v. King County, 133 Wash.2d 565, 575, 947 P.2d 712 (1997),  
7 which held that " RCW 42.17.310(1)(d)<sup>1</sup> provides a broad categorical exemption from  
8 disclosure all information contained in an open active police investigation file." (Emphasis  
9 added.) The same should control here, or, at a minimum, the fact that an investigation  
10 continues in the present case is a factor that should be considered by the Court in determining  
11 whether the Cowles presumption is overcome here.  
12

13  
14  
15 4. The Records Are Exempt As The State's Work Product

16 Under Cowles, Newman, and RPC 3.6 and 3.8, then, the Court should hold that in  
17 this particular case, all the requested material is exempt from public disclosure, at least  
18 during the pendency of the criminal prosecution. In the alternative, if not categorically  
19 exempt, major portions of these materials are exempt under specific provisions of the Public  
20 Records Act. For example, the evaluative and organizational work product of the prosecution  
21 team is not available to the defense and is obviously not available to the press for publication.  
22 Moreover, for public record purposes the underlying factual material gathered by State's  
23  
24

25  
26 <sup>1</sup> Recodified at RCW 42.56.210.

1 litigation team is also exempt work product under RCW42.56.210. "With respect to the  
2 factual documents gathered by the prosecutor and which Mr. Limstrom had already received  
3 from other sources prior to the trial court's ruling, withhold the documents are part of the  
4 prosecutor's fact-gathering process and are work product." Limstrom v. Ladenburg, 136  
5 Wn.2d 595,614,963 P.2d 869 (1998).  
6

7 In a case of this complexity, involving multiple crime scenes in multiple counties, it  
8 should surprise no one that since this case was referred to the Pierce County Prosecuting  
9 Attorney, there have been ongoing evaluative and organizational efforts undertaken by and  
10 under the supervision of that office. Moreover, Ms. Joyce Glass, the Public Records officer  
11 for the Prosecuting Attorney's Office has already denied these same requests for investigative  
12 reports as being attorney work product.  
13

14 5 Tip Records Are Exempt Under The Specific Investigative Records  
15 Exemption

16 In addition to other investigative records, the discovery contains unsubstantiated tips.  
17 These "tip" records "contains unproved claims, often made anonymously, and accordingly  
18 involves substantial privacy rights of numerous individuals." and RCW 42.56.240 exempts  
19 from disclosure:  
20

21 Specific intelligence information and specific investigative  
22 records compiled by investigative, law enforcement and  
23 penology agencies, the nondisclosure of which is essential to  
24 effective law enforcement or for the protection of any person's  
25 right to privacy.  
26

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1           These same considerations underpin The Washington State Criminal Records Privacy  
2 Act, RCW 10.97. This protects against the release of booking photos and other arrest records.  
3 Likewise, RCW 70.48.100 protects against the release of jail records.  
4

5           "Right to privacy" is in turn defined at RCW 442.56.050. The Court of Appeals has  
6 held that "specific investigative records" exemption applies to anonymous, unsubstantiated  
7 allegations made to law enforcement because of overriding privacy concerns of the subject of  
8 the allegations. "[When disclosure of public investigatory records is resisted due to privacy,  
9 the involved agency and the courts have a duty to interpret and apply RCW 42.17.310(1)(d),  
10 and pursuant to that duty, they must consider all relevant factors bearing on whether the  
11 information in the records is of legitimate public concern." City of Tacoma v. Tacoma News  
12 Inc., 65 Wn.App. 140, 15 1, 827 P.2d 1094, rev. denied 1 19 Wn.2d 1020, 838 P.2d 692  
13 (1992).  
14

15                     6. Improper Pretrial Publicity Jeopardizes A Fair trial By An Impartial Jury  
16

17           Bench Press Bar Guidelines address these very concerns and provide:

- 18                     2. The release of certain types of information by law  
19 enforcement personnel, the bench and the bar and  
20 publication thereof by news media generally tends to  
21 create dangers of prejudice without serving a significant  
22 law enforcement or public interest function. Therefore,  
23 all concerned should be aware of the dangers of  
24 prejudice in making pretrial public disclosures of the  
25 following:  
26                     (a) Opinion about a defendant's character, guilt or  
innocence.  
                     (b) Admissions, confessions or the contents of statements  
or alibis attributable to a defendant

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- 1 (c) Opinions about the results of investigative procedures,  
2 such as fingerprints, polygraphs examinations, ballistic  
3 tests or laboratory tests.  
4 (d) Statements concerning the credibility or anticipated  
5 testimony of prospective witnesses.  
6 (e) Opinions concerning evidence or argument in the case,  
7 whether or not anticipated that such evidence or  
8 argument will be used at trial.

9 All of these types of prejudicial information and more are contained within the  
10 documents the PCSO intends to disseminate. Defendant Allen also asks that if the Court  
11 determines that any the records may be released, that all identifying information be redacted;  
12 including names, birthdates, addresses and phone numbers.

13 **OBJECTIONS:**

14 **1. ATF Reports**

15 Defendant objects to release of this report because it contains the address or other  
16 personal information of a suspect or potential witness and release would invade  
17 that person's privacy. It also contains information regarding the collection of  
18 evidence to be tested.

19 **2. Witness/Suspect Statements (Including Tacoma Police Department Officer**  
20 **Notes**

21 Defendant objects to the release of any statements, notes regarding statements,  
22 and transcripts of statements. RPC 3.6 Guidelines I (5) & (6); Bench Press Bar  
23 Guidelines 2(a), (b) and (d) and as part of the ongoing investigation. RCW  
24 42.56.240. Additionally, counsel' review reveals that during law enforcement  
25  
26

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1 questioning the interviewee was frequently challenged as being untruthful and  
2 asked to comment on the credibility and actions of others. These interviews  
3 contain unsubstantiated speculation and inadmissible hearsay evidence. As well,  
4 the reporting officers have placed stars next to particular names signaling their  
5 personal beliefs as to guilt of the interviewees designated by the stars.  
6

7 Captain Meinema notes contain opinions and comments on individuals. Detective  
8 Griffith's notes contain notations as to interviews with those subsequently  
9 accused, an individual who also admitted assisting Maurice Clemmons but was  
10 not subsequently charged, third party beliefs and hearsay statements concerning  
11 Mr. Allen, information on other possible charges and the desire to push for  
12 charging particular individuals with serious crimes.  
13

### 14 3. King County Housing Authority & Financial/Protected Housing Documents

15 Personal financial and state and public housing documents are protected from  
16 disclosure. Additionally, the documents identify individuals not charged with any  
17 crime and would impermissibly violate the individual's rights to privacy.  
18

### 19 4. King County Sheriff

20  
21 Event log - The objects to the release of these documents under the on going  
22 investigation exemption.  
23

24 Vehicle Impound The defendant objects to release of this report because it  
25 contains the address and other personal information of a suspect or potential  
26

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1 witness and release would invade that person's privacy. Additionally, the  
2 document identify an individual not charged with any crime and would  
3 impermissibly violate the individual's rights to privacy.  
4

5  
6 **Officer Reports** In addition to the objections outlined in the Authority section  
7 above, the defendant objects to release of these reports because they contains the  
8 address and other personal information of suspect or potential witnesses and  
9 release would invade that person's privacy. Also the reports contain  
10 information on numerous surveillance locations for individuals who are not  
11 charged or associated with the criminal investigation. The reports also contain  
12 protected tip information, personal records, including financial documents, car  
13 registration records, hearsay and inadmissible evidence including officer  
14 opinions regarding the credibility of various individuals identified in the reports,  
15 including defendants. The reports also contain statements associated with those  
16 charged with crimes. These reports are also exempt because they concerns the  
17 collection of items to be tested, testing or results of forensic testing. RCW  
18 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
19 Guidelines 2(c).  
20  
21

22 **5. Related Pierce County Sheriff Department Cases**

23 Reports on incidents involving minors and allegations of sexual misconduct  
24 are protected from disclosure. Redaction would not alleviate the invasion of  
25 privacy of the individuals named in the reports. Likewise medical records and  
26

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1 evaluations associated with the investigation of sexual misconduct are protected  
2 privacy records. As stated previously, the Public Records Act itself recognizes  
3 exemptions not only under RCW 42.56 *et seq* but also under any "other statute  
4 which exempts or prohibits disclosure of specific information or records." RCW  
5 42.56.070. In 1991, the Legislature enacted the Uniform Health Care Information  
6 Act, Chapter 70.02 RCW. In doing so it made specific findings, including (1)  
7 **Health care information is personal and sensitive information that if**  
8 **improperly used or released may do significant harm to a patient's interests**  
9 **in privacy, health care, or other interests.** Taking into account the same  
10 privacy considerations, the Federal Health Insurance Portability And  
11 Accountability Act (HIPPA) Standards, 45 C.F.R. § 164.512, also requires notice  
12 to the patient and an opportunity to object.

13 The related case documents also contain protected "tip" information. See 09-  
14 3550721.1.

15 Defendant Allen does not object to the release of information relating to  
16 Martin Santo Lewis. See 09-333-743.1 and .2. Mr. Lewis' case has already gone  
17 to trial and been extensively reported upon. What is of note, is that in the media  
18 coverage of this individual's trial statements, the press invariably loops the story  
19 back to Maurice Clemmons and the individual's now facing charges even though  
20 they have no connection to Mr. Lewis.

## 21 6. Washington State Fusion Center Intelligence Reports

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1 Defendant objects to the release of tip and intelligence reports. RCW 42.56.240.  
2  
3 Moreover, the reports concerning alleged observations of Latanya Clemmons  
4 encourage improper and unfounded speculation with a high likely hood to unfairly  
5 influence a potential jury pool.

6  
7 **7. Seattle Police Department Reports**

8 Defendant Allen objects to the release of these reports and officer notes under the  
9 ongoing investigation exception and the significant adverse effect on his right to  
10 obtain a fair trial by an impartial jury. Moreover, the reports regarding the  
11 shooting of Maurice Clemmons contain information that includes forensic  
12 evidence collection, medical and autopsy information. The shooting has been  
13 covered by the media during the hearing involving the Seattle police officer  
14 responsible for killing Maurice Clemmons and the Officer's awards for his  
15 actions.

16  
17 Reports involving a "cooperating" witness are protected tip information and the  
18 reports are exempt under the ongoing investigation exemption. They also contain  
19 impermissible opinion and credibility assessments.

20 In addition to being exempt under the ongoing investigation provisions, reports  
21 regarding the service of search warrants and SWAT team activity associated with  
22 a residence at which no evidence was found and none of the occupants have been  
23 charged should not be released due to privacy concerns.

24  
25 The Seattle Police Department CSI reports are exempt forensic/testing reports.  
26

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1 RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
2 Guidelines 2(c).  
3

4 **8. Major Incident Log**

5 Defendant Allen objects to the release of the major incident log as being exempt  
6 under the ongoing investigation exception.  
7

8 **9. Tacoma Police Department Files**

9 See Objection No. 2 – for objection to officer notes of interviews and Objection  
10 No. 10 below for objections concerning forensic investigations.  
11

12 **10. Tacoma Police Department Forensics Reports**

13 Defendant objects to the release of documents concerning the testing or results of  
14 forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3);  
15 Bench Press Bar Guidelines 2(c).  
16

17 **11. Pierce County Sheriff Department Incident Reports**

18 Defendant Allen objects to the release of any law enforcement investigative report  
19 because the investigation is ongoing, the reports contain inadmissible evidence  
20 and contain addresses, and personal data of individuals. Additional objections are  
21 identified by the number of the supplemental report ie “.1” etc.  
22

23 **Incident No. 093330363.1** The defendant objects to release of this report  
24 because it contains the address and other personal information of a suspect or  
25 potential witness and release would invade that person’s privacy. It also contains  
26

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1 hearsay and other inadmissible evidence. Cowles, Supra

2  
3 **Incident No. 093330363.2** The defendant objects to release of this report  
4 because it contains the address and other personal information of a suspect or  
5 potential witness and release would invade that person's privacy. It also contains  
6 hearsay and other inadmissible evidence.

7  
8 **Incident No. 093330363.3** The defendant objects to release of this report  
9 because it contains the address or other personal information of a suspect or  
10 potential witness and release would invade that person's privacy. It also contains  
11 hearsay and other inadmissible evidence.

12  
13 **Incident No. 093330363.4** The defendant objects to release of this report  
14 because it contains the address and other personal information of a suspect or  
15 potential witness and release would invade that person's privacy. It also contains  
16 hearsay and other inadmissible evidence.

17  
18 **Incident No. 093330363.5** This report is exempt because it concerns the  
19 collection of items to be tested, testing or results of forensic testing. RCW  
20 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
21 Guidelines 2(c). It also contains inadmissible opinion testimony.

22  
23 **Incident No. 093330363.6** This report is exempt because it concerns the  
24 collection of items to be tested, testing or results of forensic testing. RCW  
25 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
26 Guidelines 2(c). It also contains inadmissible opinion testimony.

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**Incident No. 093330363.7** This report is exempt because it concerns the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion testimony.

**Incident No. 093330363.8** The defendant objects to release of this report because it contains the address or other personal information of a suspect or potential witness and release would invade that person's privacy .. It also contains hearsay and other inadmissible evidence.

**Incident No. 093330363.9** Defendant does not object to the release of this report as it solely relates to the false claim of responsibility by another that has already been adjudicated.

**Incident No. 093330363.10** This report is exempt because it concerns the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion testimony.

**Incident No. 093330363.11** This report is exempt because it concerns the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c). It also contains inadmissible opinion testimony.

**Incident No. 093330363.12** The defendant objects to release of this report because it contains the address or other personal information of a suspect or

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1 potential witness and release would invade that person's privacy. It also possible  
2 "tip" evidence, hearsay and other inadmissible evidence.  
3

4 **Incident No. 093330363.13** This report is exempt because it concerns the  
5 collection of items to be tested, testing or results of forensic testing. RCW  
6 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
7 Guidelines 2(c). It also contains inadmissible opinion testimony.  
8

9 **Incident No. 093330363.14** The defendant objects to release of this report  
10 because it contains the address or other personal information of a suspect or  
11 potential witness and release would invade that person's privacy. It also reflects  
12 possible "tip" evidence, hearsay and other inadmissible evidence.  
13

14 **Incident No. 093330363.15** This report is exempt because it concerns the  
15 collection of items to be tested, testing or results of forensic testing. RCW  
16 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
17 Guidelines 2(c). It also contains inadmissible opinion testimony.  
18

19 **Incident No. 093330363.16** The defendant objects to release of this report  
20 because it contains the address or other personal information of a suspect or  
21 potential witness and release would invade that person's privacy. It also contains  
22 information regarding the collection of evidence to be tested.  
23

24 **Incident No. 093330363.17** This report is exempt because it concerns the  
25 collection of items to be tested, testing or results of forensic testing. RCW  
26 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar

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1 Guidelines 2(c). It also contains inadmissible opinion testimony.  
2

3 Incident No. 093330363.18 This report is exempt because it concerns the  
4 collection of items to be tested, testing or results of forensic testing. RCW  
5 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
6 Guidelines 2(c). It also contains inadmissible opinion testimony.  
7

8 Incident No. 093330363.19 The defendant objects to release of this report  
9 because it contains the address or other personal information of a suspect or  
10 potential witness and release would invade that person's privacy. It also contains  
11 information regarding the collection of evidence to be tested.  
12

13 Incident No. 093330363.20 Defendant does not object to the release of this  
14 document.  
15

16 Incident No. 093330363.21 The defendant objects to release of this report  
17 because it contains the address or other personal information of a suspect or  
18 potential witness and release would invade that person's privacy.  
19

20 Incident No. 093330363.22 The defendant objects to release of this report  
21 because it contains the address or other personal information of a suspect or  
22 potential witness and release would invade that person's privacy. It also contains  
23 information regarding the collection of evidence to be tested.  
24

25 Incident No. 093330363.23 The defendant objects to release of this report  
26 because it contains the address or other personal information of a suspect or  
potential witness and release would invade that person's privacy. It also contains

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1 information regarding the collection of evidence to be tested.  
2

3 **Incident No. 093330363.24** The defendant objects to release of this report  
4 because it contains the address or other personal information of a suspect or  
5 potential witness and release would invade that person's privacy. It also contains  
6 information regarding the collection of evidence to be tested.  
7

8 **Incident No. 093330363.25** The defendant objects to release of this report  
9 because it contains the address or other personal information of a suspect or  
10 potential witness and release would invade that person's privacy. It also contains  
11 information regarding the collection of evidence to be tested.  
12

13 **Incident No. 093330363.26** The defendant objects to release of this report  
14 because it contains the address or other personal information of a suspect or  
15 potential witness and release would invade that person's privacy. Defendant  
16 Allen objects to the release of any statements, notes regarding statements, and  
17 transcripts of statements. RPC 3.6 Guidelines I (5) & (6); Bench Press Bar  
18 Guidelines 2(a), (b) and (d) and as part of the ongoing investigation. RCW  
19 42.56.240. Additionally, counsel' review reveals that during law enforcement  
20 questioning the interviewee was frequently challenged as being untruthful and  
21 asked to comment on the credibility and actions of others. These interviews  
22 contain unsubstantiated speculation and inadmissible hearsay evidence. It also  
23 contains information regarding the collection of evidence to be tested, hearsay and  
24 other inadmissible evidence, including speculation as to other illegal activities.  
25  
26

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1 Incident No. 093330363.27 The defendant objects to release of this report  
2 because it contains the address or other personal information of a suspect or  
3 potential witness and release would invade that person's privacy. It also contains  
4 information regarding the collection of evidence to be tested.  
5

6 Incident No. 093330363.28 The defendant objects to release of this report  
7 because it contains the address or other personal information of a suspect or  
8 potential witness and release would invade that person's privacy. It also contains  
9 information regarding the collection of evidence to be tested.  
10

11 Incident No. 093330363.29 The defendant objects to release of this report  
12 because it contains the address or other personal information of a suspect or  
13 potential witness and release would invade that person's privacy. It also contains  
14 information regarding the collection of evidence to be tested and what appears to  
15 be completely unrelated evidence of illegal activity.  
16

17 Incident No. 093330363.30 The defendant objects to release of this report under  
18 our general objection to items being released. It also contains information  
19 regarding the collection of evidence to be tested.  
20

21 Incident No. 093330363.31 The defendant objects to release of this report  
22 because it contains the address or other personal information of a suspect or  
23 potential witness and release would invade that person's privacy. It also contains  
24 information regarding the collection of evidence to be tested and what appears to  
25 be completely unrelated evidence of personal communications and financial  
26

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1 activity.

2  
3 **Incident No. 093330363.32** The defendant objects to release of this report  
4 because it contains the address or other personal information of a suspect or  
5 potential witness and release would invade that person's privacy. It also contains  
6 information regarding the arrest and assertion of constitutional rights of an  
7 accused.

8  
9 **Incident No. 093330363.33** This report is exempt because it concerns the  
10 collection of items to be tested, testing or results of forensic testing. RCW  
11 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
12 Guidelines 2(c). It also contains inadmissible opinion testimony.

13  
14 **Incident No. 093330363.34** This report is exempt because it concerns the  
15 collection of items to be tested, testing or results of forensic testing. RCW  
16 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
17 Guidelines 2(c). It also contains inadmissible opinion testimony.

18  
19 **Incident No. 093330363.35** The defendant objects to release of this report  
20 because it contains the address or other personal information of a suspect or  
21 potential witness and release would invade that person's privacy. It also contains  
22 information regarding the arrest and assertion of constitutional rights of an  
23 accused and contains hearsay and other inadmissible evidence.

24  
25 **Incident No. 093330363.36.** This report is exempt because it concerns the  
26 collection of items to be tested, testing or results of forensic testing. RCW

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1  
2 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
3 Guidelines 2(c). It also contains inadmissible opinion testimony. It also includes  
4 information regarding witness/suspect arrests and statements.

5 **Incident No. 093330363.37** The defendant objects to release of this report  
6 because it contains the address or other personal information of a suspect or  
7 potential witness and release would invade that person's privacy, including  
8 financial information. This report is also exempt because it concerns the  
9 collection of items to be tested, testing or results of forensic testing. RCW  
10 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
11 Guidelines 2(c).  
12

13 **Incident No. 093330363.38** This report is also exempt because it concerns the  
14 collection of items to be tested, testing or results of forensic testing. RCW  
15 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
16 Guidelines 2(c).  
17

18 **Incident No. 093330363.39** The defendant objects to release of this report  
19 because it contains the address or other personal information of a suspect or  
20 potential witness and release would invade that person's privacy, including  
21 financial information. This report is also exempt because it concerns the  
22 collection of items to be tested, testing or results of forensic testing. RCW  
23 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
24 Guidelines 2(c).  
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**Incident No. 093330363.40** The defendant objects to release of this report because it contains the address or other personal information of a suspect or potential witness and release would invade that person's privacy, including personal phone records information. This report is also exempt because it concerns the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

**Incident No. 093330363.41** The defendant objects to release of this report because it contains the address or other personal information of a suspect or potential witness and release would invade that person's privacy. This report is also exempt because it concerns the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

**Incident No. 093330363.42** The defendant objects to release of this report because it contains the address or other personal information of a suspect or potential witness and release would invade that person's privacy, including financial information. This report is also exempt because it concerns the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

**Incident No. 093330363.43** The defendant objects to release of this report because it contains the address or other personal information of a suspect or

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1 potential witness and release would invade that person's privacy, including  
2 financial information. This report is also exempt because it concerns the  
3 collection of items to be tested, testing or results of forensic testing. RCW  
4 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
5 Guidelines 2(c).  
6

7 **Incident No. 093330363.44** The defendant objects to release of this report  
8 because it contains the address or other personal information of a suspect or  
9 potential witness and release would invade that person's privacy, including social  
10 welfare and financial information. This report is also exempt because it concerns  
11 the collection of items to be tested, testing or results of forensic testing. RCW  
12 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
13 Guidelines 2(c).  
14

15 **Incident No. 093330363.45.** The defendant objects to release of this report  
16 because it contains the address or other personal information of a suspect or  
17 potential witness and release would invade that person's privacy, including social  
18 welfare and financial information. This report is also exempt because it concerns  
19 the collection of items to be tested, testing or results of forensic testing. RCW  
20 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
21 Guidelines 2(c).  
22

23 **Incident No. 093330363.46** The defendant objects to release of this report  
24 because it contains the address or other personal information of a suspect or  
25 potential witness and release would invade that person's privacy. This report is  
26

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1 also exempt because it includes impermissible officer opinions of guilt.

2  
3 Incident No. 093330363.47 The defendant objects to release of this report  
4 because it contains the address or other personal information of a suspect or  
5 potential witness and release would invade that person's privacy. This report is  
6 also exempt because it contains statement evidence and includes hearsay and  
7 other inadmissible evidence. This report is also exempt because it concerns the  
8 collection of items to be tested, testing or results of forensic testing. RCW  
9 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
10 Guidelines 2(c).  
11

12 Incident No. 093330363.48. The defendant objects to release of this report  
13 because it contains the address or other personal information of a suspect or  
14 potential witness and release would invade that person's privacy, including social  
15 welfare and financial information and impermissible police opinions regarding  
16 witness credibility. This report is also exempt because it concerns the collection  
17 of items to be tested, testing or results of forensic testing. RCW 42.56.240  
18 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).  
19

20 Incident No. 093330363.49 The defendant objects to release of this report  
21 because it contains the address or other personal information of a suspect or  
22 potential witness and release would invade that person's privacy, including social  
23 welfare and financial information. This report is also exempt because it concerns  
24 the collection of items to be tested, testing or results of forensic testing. RCW  
25 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
26

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1  
2 Guidelines 2(c).

3 Incident No. 093330363.50 The defendant objects to release of this report  
4 because it contains the address or other personal information of a suspect or  
5 potential witness and release would invade that person's privacy. This documents  
6 also contains exempt "tip" data.  
7

8 Incident No. 093330363.51 This report is exempt because it concerns the  
9 collection of items to be tested, testing or results of forensic testing. RCW  
10 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar  
11 Guidelines 2(c).

12 Incident No. 093330363.52 Defendant objects to the release of the document  
13 because it contains the address of an uncharged individual. This report is also  
14 exempt because it concerns the collection of items to be tested, testing or results  
15 of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I  
16 (3); Bench Press Bar Guidelines 2(c).  
17

18 Incident No. 093330363.53 The defendant objects to release of this report  
19 because it contains the address or other personal information of a suspect or  
20 potential witness and release would invade that person's privacy. This report is  
21 also exempt because it concerns the collection of items to be tested, testing or  
22 results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6  
23 Guidelines I (3); Bench Press Bar Guidelines 2(c).  
24

25 Incident No. 093330363.54 The defendant objects to release of this report  
26

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1 because it contains the address or other personal information of a suspect or  
2 potential witness and release would invade that person's privacy. It also contains  
3 impermissible opinion and hearsay evidence. Including allegations of gang  
4 association.  
5

6 **Incident No. 093330363.55** The defendant objects to release of this report  
7 because it contains the address or other personal information of a suspect or  
8 potential witness and release would invade that person's privacy.  
9

10 **Incident No. 093330363.56** The defendant objects to release of this report  
11 because it contains the address or other personal information of a suspect or  
12 potential witness and release would invade that person's privacy, including Mr.  
13 Hinton's personal address and vehicle ownership of an uncharged individual.  
14 Cowles, Supra. **Incident No. 093330363.57**  
15

16 The defendant objects to release of this incident report because it identifies the  
17 residence of an unnamed party, which constitutes an invasion of privacy to that  
18 individual.  
19

20 **Incident No. 093330363.58** The defendant objects to release of photo of Maurice  
21 Clemmons.

22 **Incident No. 093330363.59** The defendant objects to release of this incident  
23 report and the statement referred to in the incident report because it is a statement  
24 from a prospective witness or suspect.  
25

26 **Incident No. 093330363.60** The defendant objects to release of this incident

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1 report because it refers to the names and addresses of individuals not known to be  
2 connected to this matter and would constitute an invasion of their privacy.  
3

4 **Incident No. 093330363.61** The defendant objects to release of this report  
5 because it relates to an on-going investigation.  
6

7 **Incident No. 093330363.62** The defendant objects to release of this report  
8 because it lists the address of people either not known to be connected to this  
9 matter or potential witnesses. Release would constitute an invasion of their  
10 privacy.  
11

12 **Incident No. 093330363.63** The defendant objects to release of this document  
13 because it contains the address of people not charged in this case and would  
14 invade their privacy.  
15

16 **Incident No. 093330363.64** The defendant objects to release of this report  
17 because it contains witness statements and statements from suspects.  
18

19 **Incident No. 093330363.65** The defendant objects to release of this report  
20 because it contains information related to witness statements.  
21

22 **Incident No. 093330363.66** The defendant objects to the release of this report  
23 contains witness statements, phone numbers of people not charged or otherwise  
24 known to be related to this case, and contains statements from suspect/defendant  
25 Hinton.  
26

**Incident No. 093330363.67** The defendant objects to the release of this report  
because it contains a suspects address and release would invade the person's

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1  
2 privacy.

3 Incident No. 093330363.68 The defendant objects to the release of this report  
4 because it contains the address of a suspect and would invade that person's  
5 privacy.

6 Incident No. 093330363.69 The defendant objects to the release of this report  
7 because it contains the address of a suspect and of potential witnesses and release  
8 would invade their privacy.

9  
10 Incident No. 093330363.70 The defendant objects to release of this report  
11 because it contains the address of a suspect/defendant Latonya Clemmons and  
12 other potential witnesses and release would invade their privacy.

13  
14 Incident No. 093330363.71 The defendant objects to release of this report  
15 because it contains the address of suspects or potential witnesses and release  
16 would invade their privacy.

17 Incident No. 093330363.72 The defendant objects to the release of this report  
18 because it contains the address of a suspect and potential witness and release  
19 would constitute an invasion of their privacy.

20  
21 Incident No. 093330363.73 The defendant objects to release of this report  
22 because it contains statements from suspects and potential witnesses.

23  
24 Incident No. 093330363.74 The defendant objects to release of this report  
25 because it contains statements by a potential witness.

26  
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1  
2 **Incident No. 093330363.75** The defendant objects to release of this report  
3 because it contains the address of a suspect or potential witness and release would  
4 invade that person's privacy.

5 **Incident No. 093330363.76** The defendant objects to release of this report  
6 because it contains the address of a suspect or potential witness and release would  
7 invade that person's privacy.  
8

9 **Incident Nos. 093330363.77 through 121**

10 Defendant objects to release of each of these reports. Interviews of defendants  
11 and witnesses are in .78, .79, .80, .81, .82, .86, .88, .90, .92, .95, .96, .97, .98,  
12 .102, .107, .108, .111, .115, .116, .117, .119, and .120.  
13

14 Evidence was collected and mentioned in .76, .84, .85, .90, .93, .95, .100, .101,  
15 .103, .105, .106, .109, .110, .112, .114, .118, .119, and .120.  
16

17 Search warrants and entries are referenced in .76, .87, .99, .104, .108, .113, and  
18 .119.  
19

20 Details of the ongoing investigation are in .77, .83, .84, .90, .91, .92, .104, .120,  
21 and .121.  
22

23 Arrests of defendants are in .89 and .90.

24 **Incident No. 093330363.122** The defendant objects to the release of this report  
25 because it contains refers to a photo montage and constitutes an exception to  
26 release.

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**Incident No. 093330363.123** The defendant objects to the release of this report because it contains statements made by suspects and may be inadmissible. CrR 3.5 hearing has not been held in this matter.

**Incident No. 093330363.124** The defendant objects to the release of this report because it pertains to an ongoing investigation.

**Incident No. 093330363.125** The defendant objects to the release of this report because it contains statements made by a defendant, contains inadmissible opinions from the officer regarding the truthfulness of a witness/suspect, Latanya Clemmons and contains personal information regarding potential witnesses.

**Incident No. 093330363.126** The defendant objects to release of this report because it contains information about video that may be inadmissible due to the poor quality of the tape. There is no indication what relevance the tape might have to the charges. The report contains a description of the recording procedures of a business. Release might compromise the security of that business.

**Incident No. 093330363.127** The defendant objects to release of this report because it contains information about a video tape that because of the poor quality could not be viewed and because the camera was not pointed towards the area of interest. The video would therefore likely be inadmissible at trial.

**Incident No. 093330363.128** The defendant objects to the release of this report because it contains private information regarding a witness and statements made by potential suspects.

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Incident No. 093330363.129 The defendant objects to release of this report because it contains information regarding surveillance videos that do not show anything relevant to this case and would therefore be inadmissible. The report also contains private information about the owners of the surveillance equipment.

Incident No. 093330363.130 The defendant objects to the release of this report because it contains private information regarding the surveillance equipment and the content of the video was determined not to have anything of relevance in it and would therefore be inadmissible at trial.

Incident No. 093330363.131 The defendant objects to release of this report because it pertains to an on-going investigation.

Incident No. 093330363.32 The defendant objects to the release of this report because it contains the statements of witnesses and of a suspect and defendant. There has been no CrR 3.5 hearing and the statements have not been ruled as admissible.

Incident No. 093330363.133 The defendant objects to the release of this report because it contains private information regarding cell phone numbers.

Incident No. 093330363.134 The defendant objects to the release of this report because it contains private cell phone numbers.

Incident No. 093330363.135 The defendant objects to the release of this report because it contains private cell phone numbers.

Incident No. 093330363.136 The defendant objects to the release of this report

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1 because it contains the results of forensic analysis of fingerprints.

2  
3 Incident No. 093330363.137 The defendant objects to the release of this report  
4 because it contains private cell phone numbers.

5 Incident No. 093330363.138 The defendant objects to release of this report  
6 because it contains the address of a suspect or potential witness and release would  
7 invade that person's privacy. It also has information regarding witness  
8 identifications that have not been ruled upon as admissible in court.

9  
10 Incident No. 093330363.139 The defendant objects to release of this report  
11 because it contains the address of a suspect or potential witness and release would  
12 invade that person's privacy and containing hearsay, inadmissible opinion  
13 information and It also contains personal information that is not pertinent to  
14 these cases, including information regarding medical conditions of a person  
15 named in the report. It contains information regarding protected jail records and  
16 information concerning defendant interviews.

17  
18 Incident No. 093330363.140 Defendant objects to the release of any statements,  
19 notes regarding statements, and transcripts of statements. RPC 3.6 Guidelines I  
20 (5) & (6); Bench Press Bar Guidelines 2(a), (b) and (d) and as part of the ongoing  
21 investigation. RCW 42.56.240. Additionally, counsel' review reveals that during  
22 law enforcement questioning the interviewee was frequently challenged as being  
23 untruthful and asked to comment on the credibility and actions of others. These  
24 interviews contain unsubstantiated speculation and inadmissible hearsay evidence.  
25  
26

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1 Incident No. 093330363.141 Defendant objects as protected information under  
2 the on-going investigation exemption.  
3

4 Incident No. 093330363.142 Defendant objects to the release of personal phone  
5 number /pen registration data.  
6

7 Incident No. 093330363.143 Defendant objects to the release of personal phone  
8 number /pen registration data.  
9

10 Incident No. 093330363.144 The defendant objects to release of this report  
11 because it contains the address of a suspect or potential witness and release would  
12 invade that person's privacy. It also has information regarding addresses for  
13 search warrant activities that are not at issue in this case.  
14

15 Incident No. 093330363.145 The defendant objects to release of this report  
16 because it contains the address or other personal information of a suspect or  
17 potential witness and release would invade that person's privacy. This report is  
18 also exempt because it concerns the collection of items to be tested, testing or  
19 results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6  
20 Guidelines I (3); Bench Press Bar Guidelines 2(c).  
21

22 Incident No. 093330363.146 The defendant objects to release of this report  
23 because it contains the address or other personal information of a suspect or  
24 potential witness and release would invade that person's privacy. This report is  
25 also exempt because it concerns the collection of items to be tested, testing or  
26 results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6

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Guidelines I (3); Bench Press Bar Guidelines 2(c).

**Incident No. 093330363.147** This report is also exempt because it concerns the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c) and includes private telephone numbers.

**Incident No. 093330363.148** This report is also exempt because it concerns the collection of items to be tested, testing or results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6 Guidelines I (3); Bench Press Bar Guidelines 2(c).

**Incident No. 093330363.149** The defendant objects to release of this report because it contains the address or other personal information of a suspect or potential witness and release would invade that person's privacy.

**Incident No. 093330363.151** Defendant objects to the release of any statements, notes regarding statements, and transcripts of statements. RPC 3.6 Guidelines I (5) & (6); Bench Press Bar Guidelines 2(a), (b) and (d) and as part of the ongoing investigation. RCW 42.56.240. Additionally, counsel' review reveals that during law enforcement questioning the interviewee was frequently challenged as being untruthful and asked to comment on the credibility and actions of others. These interviews contain unsubstantiated speculation and inadmissible hearsay evidence.

**Incident No. 093330363.155** The defendant objects to release of this report because it contains the address or other personal information of a suspect or

1 potential witness and release would invade that person's privacy. This report is  
2 also exempt because it concerns the collection of items to be tested, testing or  
3 results of forensic testing. RCW 42.56.240 (investigative results) RPC 3.6  
4 Guidelines I (3); Bench Press Bar Guidelines 2(c).  
5  
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12

13 **12. Case Summary**

14 Defendant objects to the release of the case summary log under the ongoing  
15 investigation exception. The summary incorporates includes inadmissible  
16 hearsay and speculation and includes officer opinions and assumptions that  
17 would deny defendant a fair trial.  
18  
19  
20

21 **13. Major Incident Log**

22 Defendant objects to the release of the major incident log under the ongoing  
23 investigation exception.  
24

25 **14. Photo Lineup**

26 The photomontages are made from booking photographs, booking photographs

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are protected from disclosure. Cowles, supra; RCW70.48.100.

**CONCLUSION**

Defendant respectfully requests that after conducting an *in camera* review the Court deny the release of the documents as being protected by law and because they will deny the defendant a fair trial by an impartial jury.

Respectfully Submitted this 13<sup>th</sup> day of May, 2010.

DEPARTMENT OF ASSIGNED COUNSEL

By \_\_\_\_\_  
Mary Kay High, WSBA No. 20123

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